A 1830

PRACTICAL TREATISE

ON THE

Jurisdiction of the Ecclesiastical Courts,

RELATING TO

PROBATES AND ADMINISTRATIONS.

WITH

AN APPENDIX,

CONTAINING AN ACCOUNT OF

ALL THE COURTS IN THE DIOCESE OF LINCOLN,

THE EXTENT OF THEIR JURISDICTION,

AND THE PLACES WHERE THE WILLS ARE PROVED AND DEPOSITED.

BY ROBERT SWAN,
Registrar of the Diocese of Lincoln.

Rerum ordo confunditur, si unicuique Jurisdictio non servetur.—Proœmium, 4 Inst.

LONDON:
S. SWEET, LAW BOOKSELLER, 3, CHANCERY-LANE;
AND J. W. DRURY, LINCOLN.

1830.

LONDON:
PRINTED BY BRADBURY AND CO., OXFORD ARMS PASSAGE.

PREFACE.

THE Author was led to investigate the subject of this Pamphlet for his own information, and in the belief that it will be found useful to the Profession, is now induced to publish it.

LINCOLN,
January 29, 1830.

CONTENTS.

INTRODUCTION.

No part of the laws of this kingdom seems so much involved in doubt, or so little understood, as the laws which regulate the jurisdiction of Ecclesiastical Courts, in matters relating to the Probates of Wills and Administration to Intestates' effects. Considering the immense amount of personal property, in continual distribution by executors and administrators, a due understanding of these laws is of great importance; for, if a probate or administration be obtained from a Court not having competent jurisdiction, such probate or administration is by the Canons void, and the executor or administrator acting under it, must be involved in much difficulty; more particularly in the case of an administrator, where an administration may be granted by the proper Court to another person in equal degree of relationship, and the administrator so appointed must supersede the administrator who may have acted under the administration granted by the Court not having jurisdiction. And in these cases, when any dispute may arise, either in the collection or distribution of the

effects of the deceased, no proceedings at law or in equity can be supported, unless the probate or administration shall have been granted by the proper Court. Very many estates are held by leases for years, as well where the leases are held by the lessee beneficially, as in those of houses, farms, &c., where the leases are at a rack rent; and as there are terms for years, either by way of mortgage or otherwise, in almost all freehold estates, and as the title to any of these, to be derived from a deceased person through a probate or administration, must be defective, unless such probate or administration shall receive its authority from the proper Ecclesiastical Court, an enquiry into the laws regulating the jurisdiction of Ecclesiastical Courts appears to be of the most urgent necessity.

For want of this enquiry, very many abuses have crept into practice in the granting of probates and administrations, and occasioned much unnecessary trouble, inconvenience, and expence to the public.

All the jurisdiction in testamentary matters, except in Royal, Archiepiscopal and manorial peculiars, originally belonged to the Bishops of the dioceses in which the persons died; but to prevent executors and administrators from being called into two Courts for the probate or administration of the same persons, in the same province, when goods should be left by them in any other diocese besides that in which they died, the Prerogative Court was established to make one probate or administration do, without any interference on the part of the ordinaries of the dioceses where the parties died, or left goods: and, as the peculiar jurisdictions of the Archbishop of Canterbury, which are dispersed throughout the province, are

exempt from the jurisdiction of the Bishops of the dioceses in which they are situated, these peculiars were also made subject to the jurisdiction of the Prerogative Court, as to the probates of the testaments or administration of the goods of persons dying in such peculiars, and leaving goods in a diocese or dioceses, or another peculiar besides those in which they died.

These salutary regulations are now commonly departed from; and, although the Prerogative Court was confined to dioceses and the peculiar jurisdictions of the Archbishop, yet, in the present day, if a person leave goods in any two divisions of a diocese, the probates and administrations are granted by the Prerogative Court; nay, indeed, executors and administrators are, in the present day, so perplexed by monitions from the Prerogative Court to prove wills or obtain administrations, where the probates or administrations have been already granted by the diocesan Court, that they commonly prove the wills and obtain administrations originally from the Prerogative Court, even where that Court has no jurisdiction. And these encroachments have been much promoted by the assumption that a probate or administration granted by the Prerogative Court, even when it has no jurisdiction, is voidable only, and not void, founded as it is upon a case that was decided in the Queen's Bench in the 22d of Eliz. (*a*), which was, however, over-ruled in the Exchequer Chamber in 37 Eliz. (*b*), and which decision took place before the establishment of the Canons of 1603. The 93d Canon was meant to meet

(*a*) *Vere* and *Jefferies*, 5 Coke, 30. See *post*, p. 46.

(*b*) *Smeathwick* v. *Bingham*, Croke's Eliz. 457. See *post*, p. 51.

this case, and it declares and pronounces all acts of the Prerogative Court, in cases where the person dying does not leave goods to the value of 5*l.* in some other diocese, or peculiar jurisdiction within the same province, than that in which he died, to be *ipso jure* void and of no effect. And it requires no great exertion of reason to discover, that what a Court does without having jurisdiction, must be null and void.

If any advantage were derived to the public from this usurped practice of the Prerogative Court, the usurpation ought to be legalised; but parties proving the wills or obtaining Administrations from the Prerogative Court, are not only put to much more trouble than in the Diocesan Court; but all the original wills proved in any Court being necessarily deposited in the registry of that Court, the parties residing in distant dioceses, and claiming small legacies or interests under such wills, must, when the wills are proved in the Prerogative Court, necessarily incur considerable expence in enquiring into their rights, either by personal inspection, or by the employment of professional men; whereas, when wills are proved in Diocesan Courts, they are deposited in the respective registries of their Courts, in the midst of the persons claiming under them, and may be more conveniently inspected.

Most of the wills that are proved relate also to real estates, and all actions concerning lands being necessarily tried in the counties where such lands are situated, it is but reasonable that such wills should be deposited within the county where the lands are. The present practice of the Prerogative Court takes to a distance from the counties, the wills relating to lands,

and ought, on that account, to be avoided as much as possible. Executors, however, have it in their power to remedy this inconvenience; the proviso in the 92d Canon reserving the option to all persons to take out a probate or administration from the jurisdiction in which the testator died, and also one from the Prerogative Court. And it is much to be regretted, that this plan has not been generally adopted, inasmuch as the wills of every diocese, &c. would have been regularly deposited within such diocese; and executors and administrators would not have been subject to the risk of acting under void probates or administrations.

TESTAMENTARY JURISDICTION

OF THE

ECCLESIASTICAL COURTS.

CHAPTER I.

TESTAMENTARY JURISDICTIONS.

THE manner in which probates and administrations first became subject to the jurisdiction of the Church, seems to be a matter of dispute. But we find in Magna Charta, that the goods of intestates should be distributed among their relations *per visum ecclesiæ*, which may be deemed to be either a grant to the Church, at that period, of the superintendence of the distribution of the intestate's effects, or otherwise as an acknowledgment that the Church already possessed such power. But to avoid any difficulty in defining the meaning of the words "*per visum ecclesiæ*," a reference to certain canons made in 1240, will explain that the will is there ordered to pass under the view of the Bishop (*a*), or *per visum Episcopi* (*b*).

(*a*) Wilkins's Concilia, p. 674.

(*b*) Historical Essay, by Geo. Reynolds, Archdeacon of Lincoln, published Anno 1743, p. 58.

In 1248 (*a*) another style came into use in the probates of wills, viz.: "*Prælatus suus*," "*Episcopus suus*," and "*Ordinarius.*" And in the provincial constitutions of 1261, "*Ordinarius loci*" is often to be met with, as likewise in the Council of Dublin, about 1217, and in the Scotch Provincial Synod, about 1225. It was also the language of the Canon Law.

And by the General Council in London, in 1268, the appropriation of this jurisdiction to the ordinary of the place, seems to have been provided for in exclusion of the Prerogative (*b*). "We ordain that the testament of him, who had, whilst he lived, benefices in divers dioceses, shall be proved by the Bishop in whose diocese the testator died" (*c*).

After this, several of Henry the Third's confirmations of the Great Charter, wherein are reserved to the prelates the liberties and customs which they had in times past, came in aid of the diocesan's right; and it may deserve observation that in the ensuing controversies, the suffragans laid great stress upon this, "that, by the custom of the Kingdom of England, the probation of testaments and administration of goods, belong to the ordinary of the place, in each diocese of the province of Canterbury" (*d*).

Nevertheless, this foundation was not strong enough to discourage Archbishop Peckham to attempt to subvert it by legatine omnipotence; for it was in express terms, *jure legationis*, and not as metropolitan, that he claimed this controverted jurisdiction; there not being wanting precedents of his Holiness's intervention in testamentary dispositions, to countenance his legate's claim to it (*d*).

(*a*) Athona, p. 107.
(*b*) 2 Wilkins's Concilia, 8.
(*c*) 3 Wilkins's Concilia, 653.
(*d*) Reynolds, 58.

Alexander the Third granted, about the year 1175, the effects of deceased clergymen, within the province of York, to Roger, Archbishop of that See (*a*); and in 1246 (*b*), Innocent the IV. seized the estates of Robert Hailes, Archdeacon of Lincoln, Almaric, Archdeacon of Bedford; and of John Hotosp, Archdeacon of Buckingham, granting, about the same time, a general commission to the Minorite Friars, to sequester the goods and chattels of intestate laymen, as well as clergymen, in exclusion of the next of kin (*c*).

Against a grant of this kind from the Pope to Henry the Third (*d*), the Proctors of the diocese of Lincoln articled in the parliament of 1255, in the following words; "They are so disquieted, because the legacies, which ought to be distributed according to the will of the deceased to the use of the poor, their parents, and servants, and to other pious uses, are granted to the King for other purposes, contrary to the will of the deceased (*e*).

And among other indulgencies to laymen (*f*), issued out of the Chancery at Rome, one was, "that executors might retain those goods, which by the wills are directed to be distributed amongst the poor"(*g*), so that the articles of impeachment against Wolsey, "that by his authority legatine he had taken the goods of deceased clergymen," by reason whereof their wills be not performed, was a description of such exorbitances as legates had commonly been guilty of, and were authorized to perpetrate (*h*).

(*a*) Reynolds, 58.
(*b*) M. Paris, 945, 962.
(*c*) *Ibid.*
(*d*) Reynolds.
(*e*) Burton Annal. p. 356.
(*f*) Reynolds, 59.
(*g*) Taxa Cancell, p. 33.
(*h*) Coke, Art. 17, 30, of Impeachment of Wolsey, 4th Institute.

Neither is it wonderful that the Pope, who looked upon himself as Lord of the Universe, and had distributed provinces and even empires, should disregard the rights of the dead, who cannot complain, or the fences of private property (*a*).

From this fruitful root, the Prerogative of Canterbury made frequent shoots; there being no one rule more steadily observed by the Metropolitans of that See, than that it was their duty to imitate the Roman Pontiff in the use of that power they derived from him (*b*).

Accordingly the controversy sprouted out again about the year 1300, between Archbishop Winchelsea and John Dalderly, Bishop of Lincoln, but came to no conclusion, the Archbishop being disabled from carrying it on, by the displeasure of Edward I. who compelled him to leave the kingdom (*c*).

However it was soon resumed by his successor, Walter Reynolds, and about 1319, terminated by his entering into a composition with the same Bishop of Lincoln, (*d*) which not only acknowledged the exclusive rights of the Bishops of Lincoln to the grant of all probates and administrations when the deceased had goods only in the diocese of Lincoln, but also when they left goods in divers dioceses; and in reference to the 92d Canon, it will be found to be one of those compositions between the Archbishop and Bishops which were exempted from the operation of that Canon; and this Composition was constantly acted upon, not only in granting probates and administrations when the

(*a*) Reynolds.
(*b*) *Ibid.*
(*c*) *Ibid.*
(*d*) Registry Dalderby's Memorandums, f. 103. *apud* Lincoln; and see Appendix, No. I.

deceased left goods in other dioceses; but there are entries in the registry of Lincoln, from 1345 to 1624, of decrees by the Bishop of Lincoln for the revocation of probates of wills, passed in the Prerogative Court (*a*), in which there were goods in different dioceses bequeathed, and the probates were afterwards granted by the Bishop of Lincoln according to the composition.

But that the general power of granting probates and administrations resided in the Bishops, is fully established by the decree of the Council of 1368, over which John Stratford, the then Archbishop of Canterbury, presided. "The testaments moreover being proved and approved before the ordinaries of the places, to whom the probation and approbation of Testaments belong." (*b*). Nor was there in any Canon made then, or at any other time previous to 1603, any reservation, or even mention of any prerogative right of the Archbishop of Canterbury, to prove wills where the deceased had goods in divers dioceses.

But although the composition regulated the jurisdictions of the Archbishop and Bishop as far as regarded the diocese of Lincoln, the other parts of the province had not a long respite, for in 1384 and in 1400, this matter was in contest between the Archbishop and Bishop of Exeter; and in 1414, certain commissioners appointed by Hen. V. to inquire into the state of the Church, represented this prerogative assumed by Archbishops, as a common grievance to the subject, as well as the ordinary (*c*).

"Article the thirty-first, concerning the Prerogatives of the Churches of Canterbury and York."

"Wherefore the prerogative of the churches of

(*a*) Reynolds, 42.
(*b*) 2 Wilkins's Concilia, 705.
(*c*) Reynolds.

Canterbury and York, which was never founded on right, has very much unsettled the jurisdictions of the inferior Bishops and other ordinaries, by unnecessarily troubling the persons living within them; wherefore many things at variance with what is right have been the consequence, and the powers given to the ordinaries have been impeded in their regular exercise" (*a*).

And upon this consideration it was judged equitable (*b*), in the year 1707, to relieve the widows and orphans of persons engaged in the Government dock-yards, from the inconveniences to which they were subject by contentions between the Prerogative Court and the Ordinary Jurisdiction; and the Act of 4 and 5 Anne was passed to direct that the probates of the wills, and the letters of administration of the goods and chattels of such persons, should be granted by the person, to whom the ordinary power should belong, where the party should die; and that the wages due to such party should not be considered *bona notabilia* to found the Prerogative upon.

About the year 1494(*c*), Pope Alexander IV. induced, as he was pleased to declare, by no other motive than his own knowledge of the benefits accruing to the province from it, repaired the jurisdiction of the Prerogative Court of Canterbury by a new grant of privileges, in respect of testamentary cognizance(*d*).

In this Bull there were two very significant clauses(*e*). The first was a clause to supply all defect of fact as well as of law. The preamble of the Bull suggested that the Archbishops had immemorially enjoyed the

(*a*) 3 Wilkins's Concilia, 364.
(*b*) Reynolds.
(*c*) *Ibid.*, 64.
(*d*) 3 Wilkins's Concilia, 641.
(*e*) Reynolds, 46.

privilege of taking probates of wills, when the effects bequeathed were in different dioceses; lest, therefore, the notoriety of the falsehood of that suggestion should invalidate the grant, it was found adviseable to provide a supplement for truth (*a*).

The second was a general *non obstante* to any authority that was contrary to this concession, and particularly to the Constitution of 1268, about the probate of the will of a pluralist, which has before been set out at large (*b*).

Upon this accession of strength, Archbishop Morton resumed the exercise of his prerogative with fresh vigour; and by the terror of excommunications and other censures, which he fulminated with great profuseness, drove his comprovincial Bishops, their Archdeacons, and the possessors of testates' and intestates' effects in crowds into the Prerogative Court; where he made himself judge of the rights in controversy between the Prerogative Court and the diocesan Consistories, and pronounced for his own jurisdiction (*c*).

Against these violences Richard Hill, Bishop of London, remonstrated to the Pope; as did likewise William Wareham, his successor in the See of London, opposing the extension of the prerogative with more spirit than foresight (*d*). For he who had been the most strenuous advocate for diocesan rights, was no sooner exalted to the primacy, than he carried his prerogative with a higher hand, and gave greater encouragement to the encroachments of his officials than any of his predecessors had done. Wherefore, all the suffragans of the province concurred in a synodical complaint against

(*a*) Reynolds, 64.
(*b*) *Ibid.*
(*c*) *Ibid.*, 64.
(*d*) *Ibid.*

him in 1512; and upon his refusing to comply with the sense of the Synod, applied to the Pope.

The following items are from the synodical complaint of the Suffragan Bishops (*a*).

"In the first place the suffragans asserted, as a fundamental point, and were ready to prove, that by the custom of the kingdom of England, the probate of testaments is of ecclesiastical jurisdiction, as well from the constitutions of the province of Canterbury, as of Octobon, formerly the Legate of the Apostolical See; and, in each diocese of the province, the probate of wills and administration of goods of persons dying belonged to the ordinaries of the places where they died; from which it followed that the Archbishop, pretending a right of proving the testaments of persons dying within the dioceses of the Suffragan Bishops, and leaving goods in divers dioceses, *could not establish his claim*, upon a prerogative or privilege, unless he could found it upon some special right. They, therefore, besought the Archbishop that he would deign to declare the nature and description of such prerogative, if any such there were. To which petition the Archbishop refused to assent, desiring rather that his pretended prerogative should remain in doubt, that he might at pleasure usurp the rights of his suffragans."

"The suffragans also complained that the officials and officers of the Archbishop pretended that persons dying had goods in divers dioceses, when, in fact, they had not; and under colour thereof proved the testaments of deceased persons, when they had no right of proving them, and when the right belonged to some of the suffragans or their Archdeacons.

(*a*) 3 Wilkins's Concilia, 653. See also Appendix, No. 2.

"And that a writing, in a style not before in use is issued from the Court of this pretended Prerogative, during the present times, in the following terms, viz.: 'Proved and approved the present testament of A. B. who had, whilst he lived, and at the time of his death, goods moveable or immoveable, spiritual or temporal, rights or debts in divers dioceses, and peculiar jurisdiction of the Province of Canterbury,' &c., which style no Archbishop of Canterbury ever used, nor did any Archbishop of Canterbury, before the time of Archbishop John Morton, usurp the probate of the testaments of persons belonging to the dioceses of their suffragans; unless in that case only, when the person so dying, left, at the time of his death, *bona notabilia* in another diocese, than that in which he died; although it is altogether unknown to the suffragans by what right he pretended that this belonged to him."

"Nor can the suffragans sufficiently express their wonder from whence this prerogative derived its origin, unless only from a violent and clandestine usurpation; when it evidently appears, that, during the time of Octobon, formerly the Legate of the Apostolical See in this kingdom, this prerogative was altogether unknown. For in the time of the aforesaid Legate, a controversy arose amongst the Bishops of the Province of Canterbury, to which should belong the probate of the will of a beneficed clergyman having benefices in divers dioceses, and dying in one of them; and the doubt was referred to the decision of the Legate; who decided that the probate should belong to the Bishop, in whose diocese the beneficed clergyman should die."

"Besides, in the time of John Stratford, formerly

Archbishop of Canterbury, such prerogative was unheard of; when, in a Provincial Council of Canterbury, over which he presided, as its head, and with the consent of the Bishops and Prelates, and Clergy of the said province, he declared that the approbation and insinuation of testaments, and the distribution of the goods, as well of the clergy as laity, dying within the Province of Canterbury, belonged to the ordinaries of the places in which they died. After which council many others have followed, over which the Archbishop of Canterbury for the time being always presided, and he had power from time to time to convoke such a council. Nor has any Archbishop of Canterbury moved or proposed for the retraction or revocation of the said constitution, in which the premises are declared to belong to the ordinaries of the places, nor attempted to agitate any question concerning the right of the Bishops to the possession of this authority, nor in any council procured to be passed any order or new constitution concerning the probate of testaments and administration of goods, upon the aforesaid constitution, which the said John Stratford, one of the Archbishops themselves, made and promulgated, and which his successors by not revoking, knowingly and prudently approved, and supported the Bishops in persevering in the possession of, according to the tenor of the aforesaid constitution, until the time of John Morton, who, within the last fourteen years, died whilst prelate of the archbishoprick of Canterbury."

"And it is moreover to be noticed, that when the most Reverend Father, the present Archbishop (Wareham) was Bishop of London, he commonly proved the

testaments of all persons dying within his diocese, having goods in divers dioceses of the Province of Canterbury, even to the sum of five pounds, and something more, and something less, as evidently appears from the registers of the Church of London, made during the time of his presiding over that diocese."

This complaint, therefore, on the part of the suffragans, was supported by the acts of the then Archbishop of Canterbury, whilst he was Bishop of London, thus uniting the testimony of the whole Province of Canterbury to the authenticity of their representations.

The year after this complaint, Henry VIII., displeased with the disorders occasioned by the long continuance of this controversy, in synod and at Rome, (for it had been in litigation two centuries,) interposed, and brought things to temper. His letter, upon this occasion, to the Archbishops and Bishops, shows the importance of the controversy.

'Right reverend Fadres in God, right trusty and wel-beloved, we grete you wele (*a*). Not doubting but that you have in your good remembrance, that wher we have knowlege that ther was a plee and processe commenced and hangyng in the Court of Rome, bytwixt you on the oon party, and the most reverend Fadre in God, Tharchbishopp of Canterbury, on the other partie, for the jurisdiction, power, and auctoritie that he pretendeth to have in certayn cases, to and for the approbation of testaments within your dioceses, not only to your and his manifold inquietations, costes, and troubles; but also in a great party, to the manifest division and dissension of the universal Church of this

(*a*) Reynolds, 66.

our Royme, for so moche as the said matter concerneth and toucheth the same."

Then follow his directions as to the Archbishop's claim, and the letter concludes,—

"This, our commandment and ordinance, to endur oonly by the space of thre yeyrs next comming, after the date of these our letters. And if, during the same tyme, ther shall fortun any doubte or difficultye to rise betwixt you and the said most Reverend Fadre in God, in, of, or upon any matter, word, or sentence conteyned in our said ordinances, or any part of the same, we wol that the interpretation and construction thereof be referred oonly to us, and such of our counseyll as we heretofore deputed to be arbitratours."

This letter of the King brought the Archbishop and Bishops to terms, and they entered into a composition to the following effect; that the prerogative should not attach to any other goods of a deceased, than those which are called by the ancient English name of chattels, if those goods may be known by the denomination of chattels, which a person may dispose of by his will (*a*). And that the sum upon which the prerogative may be exercised, should be ten pounds out of the diocese in which the deceased may have died. And, lastly, although the goods of the deceased to that sum may be divided in divers peculiar parishes, unless, however, those goods shall be situated in the peculiar parishes that are reserved to the Church of Canterbury throughout the divers dioceses of the province of Canterbury, the prerogative shall not be used.

The act of 23 Henry VIII., c. 9, was passed to re-

(*a*) *Antiq. Britan. Ecclesiæ*, 308. See also Appendix, No. 3.

gulate the Ecclesiastical Jurisdictions, and more particularly those of the Archbishop of Canterbury, as appears by the preamble of the act. And it enacts that "no manner of person shall henceforth be cited or summoned, or otherwise called to appear by himself, or herself, or by any procurator, before any ordinary, Archdeacon, commissary, official or any other judge spiritual, out of the diocese or peculiar jurisdiction where the person which shall be cited, summoned, or otherwise (as is aforesaid) called, shall be inhabiting or dwelling at the time of awarding or going forth of the same citation or summons, except that it shall be for, in, or upon any of the cases or causes hereafter written; that is to say, for any spiritual offence or cause committed, or done, or omitted, foreslewed or neglected to be done, contrary to right or duty, by the Bishop, Archdeacon, commissary, official or other persons having spiritual jurisdiction or being a spiritual judge, or by any other person or persons within the diocese or other jurisdiction whereunto he or she shall be cited, or otherwise lawfully called to appear or answer." And the reservation in favour of the Archbishop is as follows;—"Provided, also, this act shall not extend in anywise to the Prerogative of the most reverend Father in God, the Archbishop of Canterbury, or any of his successors, of or from calling any person or persons *out of the diocese* where he or they be inhabiting, dwelling, or resident for probate of any testament or testaments, any thing in this act contained to the contrary notwithstanding."

This act, prohibiting the citation of all persons out of their own dioceses or peculiar jurisdictions, but reserving to the Archbishop, in respect of his prerogative, the right of citing out of a diocese only for probates

of testaments, leaves him no power, in respect of such prerogative, of citing any one, for probate of testament, out of any peculiar jurisdiction, but his own. The Archbishop's prerogative was defined by the composition of 1513; that fixed the prerogative right to the probate of wills, &c., of persons leaving goods in divers dioceses of the province of Canterbury, or divers peculiar jurisdictions belonging to the Archbishop of Canterbury: the Archbishop wanted only the reservation of a right to cite out of a diocese, having an original right to cite out of his own peculiars; and no right to cite out of any other peculiars was reserved to him, because such right did not belong to him.

The authenticity of the statement, contained in the *Antiquitates Britannicæ Ecclesiæ*, of the Composition of 1513, must be indisputable from the circumstance, that the book containing it was written by Dr. Parker, who was Archbishop of Canterbury from 1559 to 1573, and was published about the latter year. And the sentence, immediately following the description of the composition, is worthy of particular notice, as stating that "the controversy, so often excited between the Archbishop of Canterbury and the suffragans of his province was set at rest for ever;" and conveys the strongest assurance, that the composition was always acted upon in his time, and must have continued to be so, until the establishment of the Canons in 1603, into which it was embodied.

The act of 25 Henry VIII. c. 19, authorises the King to nominate thirty-two Commissioners who were to have authority to view, search, and examine the canons, constitutions, and ordinances theretofore made by the clergy of the realm; "and such of them as the King's Highness, and the said two and thirty, or the more part of them, should deem worthy to be continued,

kept, and obeyed, should be from thenceforth kept, obeyed, and executed, within the realm, so that the King's most royal assent under his great seal be furnished to the same; and the residue of the said canons, constitutions, and ordinances provincial, which the King's Highness and the said two and thirty persons, and the more part of them should not approve and judge, or deem worthy to be abolite, abrogate, and made frustrate, should from thenceforth be void and of none effect, and never be put in execution within this realm."

"Provided, also, that such canons, constitutions, ordinances, and synodals provincial, already made, which be not contravenant or repugnant to the laws, statutes, and customs of this realm, nor to the damage or hurt of the King's prerogative royal, shall now still be used and executed as they were upon the making of this act, till such time as they be viewed, searched, or otherwise ordered and determined, by the said two and thirty persons, or the more part of them, according to the tenor, form, and effect of this present act."

It is true a review was appointed, but such difficulties were found in it, as to the shaking of the foundation of the ecclesiastical laws here, that nothing was ever legally established in it; and, therefore, this Proviso is still in force (*a*).

In the statute of 25 Henry VIII. c. 21, it is said, "that this realm, recognizing no superior under God but the King, hath been and is free from subjection to any man's laws, but only to such as have been devised, made, and observed within this realm for the wealth of

(*a*) Stillingfleet's Ecclesiastical Cases, 69.

the same; or to such other as by the sufferance of the King and his progenitors, the people of this realm have taken of their free liberty, by their own consent, to be used amongst them, and have bound themselves by long use and custom to observance of the same, not as to the observance of the laws of any foreign prince, potentate, or prelate, but as to the customs and ancient laws of this realm, originally established, as laws of the same, by the said sufferance, consent, custom, and none otherwise."

This statute of 25 Henry VIII. c. 21, is a full confirmation of all canons, constitutions, ordinances, and synodals provincial, that had been theretofore made by the clergy, and although there is not any canon, constitution, ordinance, or synodal provincial, for the establishment of the Prerogative Court, yet inasmuch as the composition of 1513 was entered into between the Archbishop and suffragans, in consequence of a recommendatory letter from King Henry VIII., and as the prerogative right of the Archbishop to the probate of wills is recognized by 23 Henry VIII. c. 9, the constitution of the Prerogative Court, as it then existed, must be deemed to have been fully established.

The only Canons relating to testamentary jurisdiction, are the 92d, 93d, and 94th, and they were intended, no doubt, to render the jurisdiction of the Prerogative and diocesan, and inferior Courts, so distinct, that no question should, for the future, arise, as to their respective rights; but they expressly relate to the Archbishop's Courts.

The summary of the 92d Canon is, that if any person shall die, having, at the time of his death, goods or good debts, in any other diocese or dioceses, or peculiar

jurisdiction than in that wherein he died, amounting to the value of *5l.* the probate of his will or the administration to his effects, shall be granted by the Prerogative Court: and any probate or administration, in such case granted by any other Court, is declared to be frustrate and void. The following proviso is contained in the Canon:—"Provided always that this present constitution, or any thing contained in it, shall not be prejudicial to any composition that has been made between an Archbishop or any Bishop or other ordinary: nor to any inferior judge, who shall grant a probate of a testament or administration of effects to any person, spontaneously and of his own accord, requiring a probate or administration, as well from the inferior Court as from the Prerogative Court."

This Canon, therefore, declares all probates and administrations granted by a Bishop, or other ordinary, to be void in cases of *bona notabilia*, unless the party to whom the probate or administration shall be granted, shall voluntarily require a probate or administration from the inferior as well as from the Prerogative Court. Therefore, until the wish of the person proving the will, or requiring the administration, is expressed, it would be premature to declare to be void any probate or administration, that may have been granted by an inferior Court, where there are *bona notabilia* in another diocese.

The 93d Canon decrees and ordains that no judge of the Archbishop's Prerogative, should thenceforth cite or cause to be cited *ex officio*, any person whatsoever to any of the aforesaid intents, unless it should previously appear to the same judge, that the deceased had during his life, and at the time of his death,

goods or chattels to the value of *5l.* in any other diocese, or dioceses, or peculiar jurisdiction, situated within the same province, than that wherein he died, to the value of *5l.* And it was by the same Canon declared and pronounced, that he, who had a less sum in such a case, had not *bona notabilia.*

The following is the 94th Canon—"No Dean of the Arches, nor official of the Archbishop's Consistory, nor any Judge of the Audience, shall henceforward, in his own name, or in the name of the Archbishop, either *ex officio,* or at the instance of any party originally, cite, summon, or any way compel, or procure to be cited, summoned, or in any way compelled, any person which dwelleth not within the particular diocese or peculiar of the said Archbishop, to appear before him, or any of them, for any cause or matter whatsoever, belonging to ecclesiastical cognizance, without the licence of the diocesan first had and obtained in that behalf, other than in such particular cases only, as are expressly excepted and reserved in and by a statute, Anno 23 Hen. VIII. ch. 9."

These three Canons conjointly regulate the testamentary jurisdiction, and being so intimately connected, an ambiguity in any one of them should be explained by the other. Blackstone, in his 2d vol. of Com., p. 89, lays down as a rule in the construction of deeds, that the construction be made upon the entire deed, and not merely upon disjointed parts of it. "For the best interpretation is to be collected from the antecedent and subsequent parts." There is an ambiguity in the 92d and 93d Canons, as to the meaning and extent of the words peculiar jurisdictions; for to the peculiars belonging to

the King and to those formerly belonging to monasteries, they cannot apply. The ambiguity may be most reasonably explained, by considering the peculiar jurisdiction of the 92d and 93d Canons, and those of the 94th Canon to be the same. And this construction is *established* by the re-enactment of the statute of 23 Henry VIII., c. 9, in this last Canon, which statute, whilst it prohibits the citation of any person whatsoever out of the diocese or peculiar jurisdiction, in which he dwells, reserves to the prerogative of the Archbishop the right of citing any person out of a diocese for probate of a testament, and reserves no right to the Archbishop to cite out of any peculiar jurisdiction, thus proving that the prerogative extended not over any other peculiar jurisdiction, than those belonging to the Archbishop. And when, in addition thereto, it is considered that in the dispute of 1319, the Archbishop claimed the right to probate when goods were left in divers dioceses *or other places, belonging to the Church of Canterbury*, (the present peculiars of the Archbishop,) and further, that in the composition of 1513, the prerogative was limited to the Archbishop's peculiars, no other can have been contemplated by, or included in, the 92d and 93d Canons, of 1603, than the Archbishop's peculiars. And, in that case, the statute of 23 Henry VIII., c. 9, and these Canons are consistent with each other; but, if these Canons should be deemed to include other peculiars than those of the Archbishop, they allow to the Archbishop an interference with peculiar jurisdictions, which that statute prohibited: and, as Canons not confirmed by act of Parliament, cannot, according to the following case, alter the statute law, the 92d and 93d Canons cannot be con-

strued to allow to the Prerogative Court any right over peculiar jurisdictions, which that statute of 23 Hen. VIII., c. 9, prohibited.

Lord Chief Justice VAUGHAN, in the case of *Grove* and *Dr. Elliott*, Chancellor of Sarum, 2 Ventris' Reports, 44, adjudged that "the Canons 3 *Jacobi*, certainly are of force, though never confirmed by act of Parliament. Indeed, no Canons of England stand confirmed by act of Parliament; yet they are the laws which bind and govern in Ecclesiastical affairs. The Convocation, with the licence and assent of the King, under the great seal, may make Canons for regulation of the Church, and that as well concerning Laicks as Ecclesiasticks, and so in Linwood. Indeed, they cannot alter or infringe the common law, statute law, or King's prerogative."

The Canons of 1603 were confirmed by King James, and as far as they relate to testamentary matters, received a further confirmation from the statute of 29th Charles II. c. 3, s. 24, which is as follows: "And it is hereby declared, that nothing in this act shall extend to alter or change the jurisdiction or right of probate of wills concerning personal estates, but that the Prerogative Court of the Archbishop of Canterbury, and other Ecclesiastical Courts, and other Courts having right to the probate of such wills, shall retain the same right and power as they had before in every respect, subject, nevertheless, to the rules and direction of the act."

CHAPTER II.

PREROGATIVE COURT.

"THE prerogative of the Archbishop (*a*) is grounded upon this reasonable foundation, that as the Bishops were themselves originally the administrators to all intestates in their own dioceses, and the present administrators are in effect no other than their officers or substitutes, it was impossible for the Bishops, or those who acted under them, to collect any goods of the deceased, other than such as lay within their own dioceses, beyond which their episcopal authority extends not. But it would be extremely troublesome, if as many administrations were to be granted, as there are dioceses within which the deceased had *bona notabilia*, besides the uncertainty which creditors and legatees would be at, in case different administrators were appointed, to ascertain the fund out of which their demands are to be paid. A prerogative is therefore very prudently vested in the Metropolitan of each province, to make in such cases, one administration serve for all. This accounts satisfactorily for the reason of taking out administration to intestates, that have large and diffusive property, in the Prerogative Courts: and the probate of wills naturally follows, as was before observed, the

(*a*) 2 Bl. Com. 509.

power of granting administration, in order to satisfy the ordinary, that the deceased had in a legal manner, by appointing his own executors, excluded him and his officers from the privilege of administering to the effects."

It is clear that all the original jurisdiction as to the probate of wills, &c., belonged to the Bishops of the respective dioceses in which the persons died, and it is equally clear that the jurisdiction of the Prerogative Court was comparatively a new one, and ingrafted upon that of the Bishops, and to answer a particular purpose; it follows therefore, that the Prerogative Court can have no power but in the particular cases in which the special authority is given; and that when no such special authority is granted, the jurisdiction belongs to the Bishop, or his inferior ordinary, except only in those cases when the Archbishop and Bishops have no jurisdiction, as in Royal peculiars, &c.

"It is to be known, that the Archbishops of this realm, before the act of 23 Hen. VIII., c. 9, had power legatine from the Pope, by which they pretended to have not only superior authority over all, but concurrent authority with every ordinary in his diocese, not as Archbishop of Canterbury, &c., but by his power and authority legatine. So as before that act the Archbishop of Canterbury was *legatus natus*, and by force of his authority legatine, usurped against the canons, upon all ordinaries in his precinct, and by colour thereof claimed concurrent authority with them; which although they held in the Courts of the Archbishop, the same was remedied by the act of 23 Hen. VIII. chap. 9; and all that which he usurped before, was not as he was Archbishop, for as to that he was

restrained by the canons, but as he was *legatus natus*, which authority is now taken away, and abolished utterly."—*Porter's and Rochester's case.* 13 Coke's Reports, 7.

The only circumstance that can have given rise to the opinion, that the Archbishop has any other authority in granting probates and administrations, than where there are *bona notabilia* in two dioceses, or peculiar jurisdiction, is the question, whether a probate or administration, where there are not such *bona notabilia* is actually void, or voidable only by sentence. Now this very circumstance is of itself the strongest evidence, that no other authority exists; for if on proof before the proper court, that the deceased had not *bona notabilia*, a probate or administration granted by the Prerogative Court, shall, as in *Sir John Nedham's* case (*a*), be pronounced and declared *pro nulla et invalida ad omnem juris effectum*, it is clear that the only ground for supporting such a probate or administration, must be the fact that there are *bona notabilia*. But upon this question the various decisions are collected in a subsequent section, and in a review of these decisions, the weight of authority, the reason and justice of the matter, concur in the determination, that probates or administrations granted by the Prerogative Court, where there are not *bona notabilia* in other dioceses, or peculiar jurisdictions, than those wherein the parties died, are actually void; and when this determination is aided and enforced by the canon, all doubt upon the subject must be altogether overcome.

In all dioceses, therefore, the Prerogative Court

(*a*) 8 Reports, 269.

derives its authority from the statute of 23 Hen. VIII., chap. 9, and the canons, and must be bound and restricted to the jurisdiction thus given to it; and its jurisdiction can extend only to probates and administrations, where the testators or intestates had during their lives, or at the time of their deaths, goods or good debts to the value of *5l.* in any other diocese or dioceses, or peculiar jurisdiction; than that wherein they died.

Whatever deviation may of late years have been made by the Prerogative Court, from the regulations contained in the canons, it is presumed, that no usage can have conferred upon that Court any prescriptive right to the practice thus obtained. "For to custom and prescription, possession and time are inseparably incident. Possession must be long, continual, peaceable. Time, (as hath been said,) by Common Law, must be beyond the memory of man. But if there is sufficient proof by record, or writing to the contrary, then it is within the memory of man. No one can prescribe against an act of parliament."—Wood's Institute, 187.

Two questions arise as to the practice consequent upon the Canons. First, as to the description of the peculiar jurisdictions comprised in them; and, secondly, whether the probates, or administrations, must in all cases be granted solely by the Prerogative Court; or whether they may not, in certain cases, be granted by an inferior court, as well as by the Prerogative Court.

1st. If any doubt exist whether the peculiar jurisdictions of the 92d and 93d Canons, do comprise other than those belonging to the Archbishop, reference must be had to the subsequent inquiry (*a*) into the nature of

(*a*) See *post*, p. 70.

peculiar jurisdictions, to ascertain to what other peculiar jurisdictions these canons can extend.

2ndly. These Canons were made for the benefit of the public, and the object of the 92d Canon, was to prevent parties from being unnecessarily *compelled* by citation, to obtain from divers courts, divers probates, or administrations, for the will or effects of the same person; but it reserves to the parties themselves, the option of taking them *either from the Prerogative Court only, or from the inferior Courts, and also from the Prerogative.* Therefore, any person having, or without having knowledge that the deceased had goods to the value of 5*l.* in any other diocese or dioceses, or peculiar jurisdiction than that wherein he died, may obtain from the inferior court, a probate or administration for the amount of the effects within its jurisdiction, and another probate or administration from the Prerogative Court, for the amount of goods not within such jurisdiction; the jurisdiction of the inferior court attaching by reason of the deceased having died within its jurisdiction, and the Prerogative Court founding its jurisdiction on the circumstance, that the deceased left goods to the value of 5*l.* in another diocese or jurisdiction, than in that wherein he died.

CHAPTER III.

BONA NOTABILIA (a).

Cases in which Probates and Administrations are to be granted by the Prerogative Court.

If a man die in one diocese or peculiar jurisdiction, without any goods there, but hath *bona notabilia* in another diocese, in such case the right to grant administration is in the Archbishop.—Nelson's Abrid. 159.

If any person was, at the time of his death, possessed of goods and chattels in some other diocese, or dioceses, or peculiar jurisdiction than in that wherein he died, amounting to the value of 5*l.* at the least.—93d Canon.

If there be *bona notabilia* in a diocese under the ordinary jurisdiction of the Bishop, and also in a peculiar in that diocese, or in two peculiars situated in the same diocese, in such case the probate belongs to the Archbishop. It is expressly so laid down by Gibson, Swinburne, and in a case in Siderfin; and it is declared by those authorities, that in such case probate shall be granted, not by the diocesan, but by the Archbishop, because such peculiars are exempt from

(a) *Bona notabilia* are noticeable goods. According to the note on Linwood "*Laicis*," p. 174, those goods cannot be deemed *notabilia*, in possession whereof a man is nevertheless deemed a poor man, and a man having in goods less than 100*s.* is called a poor man. See also note, p. 43.

the jurisdiction of the diocescan.—*Sir John Nicholl*, in *Parker* v. *Templar*, 3 Phillimore's Reports, 247.

If a man have goods of the value of 5*l.* in one diocese, and a lease for years of the same value in another diocese, they are *bona notabilia*, for which the Archbishop shall grant administration.—1 Roll's Abrid. 909.

If a man have goods of the value of 5*l.* in one diocese, and an obligation of greater value in another diocese, and *the obligation shall be there*, these shall be *bona notabilia* for the Archbishop to grant administration.—1 Roll's Abrid. 909.

To make *bona notabilia*, a debt without specialty shall be accounted to be *bona notabilia*, where the debtor resides, (Hill, 37 Eliz. (B)), but not where the testator lived.—1 Roll's, 909.

If a man die intestate, having divers debts in obligations in several dioceses, the debts are called *bona notabilia* where the obligations are, and not where the debtor or creditor resides.—Hill, 37 Eliz. (B), Trin.; 17 Jas. (B), *inter Trowbridge & Taylor, per Curiam*, 3 Dyer, 305; 1 Roll's Abrid. 909.—*Loddington & Draper*, 3 Keb. 433; *Daniel* v. *Luken*, 3 Dyer, 305.

If a man have *bona notabilia* in Ireland and England, and die intestate, there shall be several administrations granted; that is to say, by the Archbishop of Dublin for the whole within his province; and by the Archbishop of Canterbury for the whole within his province. But it is to be understood, that he had *bona notabilia* in divers dioceses within either province,. or goods within the diocese of the Archbishop; for otherwise, the grant ought to be by the

ordinary where the goods are, and not by the metropolitan.—D. 14 Eliz. 305; 1 Roll's Abrid. 908.

But if a man had *bona notabilia* of 100*s.* in divers dioceses, besides that in which he died, the metropolitan shall grant the administration.—10 H. 7, 166; 1 Roll's Abrid. 908.

If a man die in one diocese, or in a peculiar jurisdiction exempt from the control of the Bishop of the diocese in which it is situated, having goods to the value of 5*l.* in any other diocese or peculiar jurisdiction, there must be a prerogative grant.

If the intestate leaves goods in several peculiars, the Archbishop of the province hath the right to grant the administration.—2 Lev. 86; *Shaw* v. *Stoughton.*

If one leaves *bona notabilia* in two dioceses of Canterbury, and two dioceses of the province of York, there must be two Prerogative administrations.—*Burston* v. *Ridley*, 1 Salkeld, 39.

Scire facias, on a judgment in *Banco Regis*, as administrator of J. S., and in his profert, shews an administration granted by the Archdeacon of Dorset. The plaintiff having made this administration his title, the Court could not admit that to be a title which was in title. (Paschæ, 1 Ann.—*Adams* v. *Tertenants of Savage.* 1 Salkeld, 40). J. S. having died in Dorset, the judgment, at Westminster, would be *bona notabilia* at Westminster.—*Vide Keg* v. *Hirton.* 2 Lutw. 399.

If a man die in one diocese and have a mortgage in fee, or for a term of years, in another diocese, and the deeds shall be in some other diocese than that in which he died, the mortgage shall be *bona notabilia*, and a prerogative probate or administration shall be granted.

To obtain an order for any payment of money out of the Court of Chancery, to the representatives of creditors, where such money is paid into Court previous to the deaths of the creditors, and where such creditors die or leave *bona notabilia* in another diocese, a prerogative probate is indispensable (*a*). 7 Vesey, J. 409; 12 *Id.* 417.

It is not necessary that the deceased should have to the value of *5l.* in each of the several dioceses (*b*) where his goods are dispersed, but if he had goods to the value of *5l.* in any one diocese besides that in which he died, they should constitute *bona notabilia*, subject to the superior jurisdictions.—3 Bacon's Abrid. 37; Godolphin, 69.

If a man die *in itinere*, leaving goods to the value of *5l.* in any other diocese than that in which he had his last usual place of residence, and besides the goods he had on his journey, there shall be a prerogative grant.

Cases in which the Probates and Administrations are not to be granted by the Prerogative Court.

If a man hath goods in one of the provinces in England, and some goods in France, or in the East Indies,

(*a*) It is said to be the practice in the Court of Chancery to refuse payment of money, unless under a prerogative probate, even when the Testator did not leave goods in any other diocese than in that wherein he died; and when the money has been paid into Chancery, after the Testator's death, upon suits instituted by or against the executors. This is an extraordinary construction upon the 92d and 93d canons, for the canons make goods *bona notabilia* if they are *at the time of his death* in another diocese than that in which he died.

(*b*) It seems clear that there must be goods to the value of *5l.* in one diocese, besides that in which the deceased died, and *5l.* must have been fixed upon as the lowest sum upon which a prerogative probate or administration should be granted, from the understanding that neither a probate nor administration by the prerogative or ordinary could be necessary for any effects under that sum.

then one administration shall serve the turn, because there is no jurisdiction we take notice of.—*Shaw* v. *Storton*. Freeman, 102.

If a man dieth in France, and hath goods in the diocese of Norwich, and the question was, whether the Bishop of Norwich should grant administration or the Archbishop? *per* NORTH, Ch. J. the Bishop of Norwich shall grant administration, unless he hath *bona notabilia*; and his dying in France is no more than if he had died at Norwich.—*Cecil* v. *Darkin*. Freeman's Reports, 256.

J. S. died possessed of goods *valoris 5l.* in the diocese of London, and also in Durham; lessor of the plaintiff took out administration in Durham, and also in London, the dioceses being in the two provinces. *Per Curiam*, the administrations in the one diocese and the other were held good.—Mich. 1 Ann. *Burston* v. *Ridley*. 1 Salkeld, 39.

Wilson died intestate, at Lincoln, having in his possession there an obligation from one York, who resided in London. Administration was granted at Lincoln; prohibition prayed to the Prerogative Court in suit to repeal the administration: prohibition granted, and *per Curiam*, *bona notabilia* is where the obligation is.—Hilary, 26 *Car.* II.—*Lodington* & *Draper*, 3 Keble 433, 438; and *vide Daniel* v. *Luken*, Dyer, 305; and *Trowbridge & Taylor*, Dyer, 305.

If a man die in one diocese, having a mortgage, either in fee, or for a term of years, of an estate in another diocese, but having the deeds in his possession in the diocese in which he died, the mortgage being a debt by specialty, shall be assets where the person died, and the probate or administration shall be granted

by the Bishop or other ordinary of the place where the person died, and not by the Prerogative (*a*).

(*a*) By a Canon established in 1328, it was decreed that nothing should be charged for a probate or administration, when the deceased should not have goods to the value of 5*l*. The words of the Canon are, "We decree, that for the insinuation and approbation of the testament of a poor man, the inventory of whose goods shall not exceed 100*s*. sterling, or for the commission of administration of his goods to be made to his executors, nothing at all be charged."—Constitutions in Appendix to Linwood, p. 42. And, according to Linwood, a man was deemed a poor man, unless he had goods to the value of 5*l*.: in the Note "*Laicis*," p. 147, "For those goods cannot be deemed *notabilia*, in the possession of which a man can nevertheless be called a poor man; and any man having less in goods than to the value of 100*s*. sterling, is called a poor man." The Act of 21 Hen. VIII., c. 5, s. 2, enacts, that nothing shall be charged by any Bishop, Archdeacon, Chancellor, Commissary, Official, &c., for the probate of any testament or the commission of administration of him whose goods should not exceed the value of 100*s*.; and that, nevertheless, the Bishop, Ordinary, &c., "refuse not to approve any such testament, being lawfully tendered or offered to them to be proved or approved, whereof the goods of the testator, or person so dying, amount not to above the value of 100*s*. sterling, so that the said testament be exhibited to him or them in writing, with wax thereunto affixed, ready to be sealed." And in the following section, the Ordinary, on the refusal of the executor to prove the will, when the goods shall exceed 100*s*., is empowered to grant administration to the widow or next of kin of the deceased. Now, as no such provision is made respecting the person dying, whose effects should not exceed 100*s*., it must have been intended to leave to the executor the option of proving or not proving the will, where the effects should not exceed that sum. These causes must have led to the omission to prove wills, where the effects did not exceed 100*s*.; and such must have been the case on the passing of the Canons of 1603. And the Prerogative Court having been established for the express purpose of rendering unnecessary two probates or administrations for the effects of the same person, the amount of *bona notabilia* to be left by the deceased in any other diocese besides that in which he died, was fixed at 5*l*. as the lowest sum upon which a Prerogative probate should be granted, because no probate or administration of any sort under that sum was deemed necessary; for if otherwise, the object of the establishment of the Prerogative Court would be avoided, inasmuch as that Court has no authority when the effects are under 5*l*.; and on a person dying in one diocese, and having

If a man be occasionally *commerant* in a house of his own in another diocese, though it is for ever so short a period, and dieth there, not having *bona notabilia* in that where he was usually resident, probate shall be granted in the diocese where he died, for he cannot then be considered as dying *in itinere.*—4 Burns' Eccl. Law, 191; 1 Salk. 37.

If a man die *in itinere,* and have not *bona notabilia* in any other diocese than in his usual place of residence, the goods he had with him on his journey shall not be *bona notabilia,* and probate or administration shall be granted in the diocese of his last usual place of residence.—92d *Canon.*

If a man die in one diocese and have in his lifetime, and at the time of his decease, goods or chattels less than the sum of 5*l.* in any other diocese, or dioceses, or peculiar jurisdiction (*a*) than in that in which he died, he shall not be deemed to have *bona notabilia,* and shall not be liable to the Prerogative Court.—93d *Canon.*

effects under 5*l.* in another, a probate or administration must be granted where the person should die, and another where the effects under 5*l.* should be.

If, therefore, a person dies in one diocese, having a mortgage for a term of years of lands in another diocese, and having the deeds in his possession in the diocese in which he died, when the executor has proved the will in the diocese in which the testator died, he has done all that the law requires of him.

(*a*) The 93d Canon is not correctly translated, as it ought to state that whoso hath not goods, *in such case,* to the said sum or value, shall not be accounted to have *bona notabilia.* The words in the original Canon are, "*Nam qui minorem aliquam summam* hoc casu *habet eundem bona notabilia non habere per præsentes decernimus et declaramus.*"

CHAPTER IV.

WHETHER PROBATES BY THE PREROGATIVE COURT, ARE VOIDABLE ONLY BY SENTENCE, OR VOID.

CASES having received contrary decisions on this subject, it will be necessary to make a general inquiry into them, and for that purpose will be given—

1st. The Cases, by which it has been decided, that the probate of the Archbishop, where there were not *bona notabilia*, in another diocese besides that in which he died, is voidable.

2dly. The Cases, by which it was decided, that the probate of the Archbishop is void, where there are not *bona notabilia*.

3dly. The conclusions to be drawn from these cases.

1st. The cases, by which it has been decided, that the probate of the Archbishop, where there were not *bona notabilia*, is voidable.

The first case determined upon the subject is that of *Vere* v. *Jefferies*, cited in *Prince's* case, in 5 Coke's

Reports, 30. It was decided in 22 Eliz., but is cited in Coke's Reports, in *Prince's* case, in 42 Eliz.

"And in this case, it was said, that judgment was given in the King's Bench, Paschæ, 22 Eliz., between *Vere* v. *Jefferies;* that where one hath goods only in an inferior diocese, yet the metropolitan of the same province, pretending that he had *bona notabilia* in divers dioceses, committed administration, this administration is not void, but voidable by sentence, because the metropolitan hath jurisdiction over all the dioceses of his province; therefore it cannot be void, but voidable, by sentence. But if an ordinary of a diocese commits administration of goods where the party hath *bona notabilia* in sundry dioceses, such administration is merely void, as well as to goods within his diocese, or elsewhere, because he can by no means have jurisdiction of the cause; *and true it is that such judgment was given.*"

Here it must be observed that the case was decided at least twenty-two years before the Canons of 1603, and that it was specially referred to in the hereinafter cited case of *Bingham* & *Smeathwick*, which was decided in the Exchequer Chamber, and quite in contradiction to it.

In *Sir John Nedham's* case, 8 Jas. I., 8 Coke, 135, Sir E. Coke refers to the foregoing case of *Vere* v. *Jefferies*, as to the administration granted by the Prerogative Court, where there are not *bona notabilia* in another diocese, being voidable only.

In the case of *Grange* against *Denny*, 14 Jas. 3: Bulstrode, 176, Lord Coke refers to the foregoing case, and says, in *Vere* & *Jefferies'* case, part 5, fol. 30, "I did first move this matter when one

had goods only in one diocese, and the metropolitan of the same province, pretending that he had *bona notabilia* in divers dioceses, commits administration, this is not void, but voidable by sentence, because he hath jurisdiction throughout the whole diocese; within his province he hath the first cathedral church, and is the ordinary, and all other Bishops within his province are derived from him; otherwise it is, where the ordinary of a diocese doth commit the administration of goods, when as the party hath *bona notabilia* in divers dioceses, this is void for all."

There was no decision of the Court in Hobart, 185, but only the statement of Counsel, that formerly there was only one Bishop (the Archbishop of Canterbury), and he granted authority to the Bishops in their respective dioceses, and retained a jurisdiction over his whole province; and therefore a probate or administration granted by him where there were not goods in divers dioceses, was voidable and not void.

The like doctrine, as in the case of *Vere* & *Jefferies*, was held also in the case of *Rex* v. *Loggen* & *Froom*, 1 Strange's Reports, 73; and upon the authority of that case, "Dr. Loggen the Chancellor, and Froom the Register of the Bishop of Salisbury, were indicted for extortion, in forcing Thomas Hollier, the executor of the will of Mary Alston, to prove the said will in the said Bishop's Court, where they well knew that the said will had been before proved in the Prerogative Court of Canterbury, and by reason thereof, they exacted of the said Thomas Hollier 40*s*. on not guilty being pleaded, there was a verdict for the King. It was moved in arrest of judgment, that it not appearing there were any *bona notabilia*, the Prerogative probate was *ipse facto* void, and consequently the will

ought to be proved before the defendant Loggen; the testator dying in the diocese of Sarum: 2dly, Admitting not void, but only voidable, yet the Prerogative Court having proceeded in a matter where they had no jurisdiction, that should not hinder the Court of Sarum from proceeding in a matter within their jurisdiction. As to the first, before the Counsel had gone far in their argument, the Judge stopped them, and declared, that it was not now to be contested, having been often settled, that such Prerogative probate is not void, but only voidable; to which the rest of the Court agreed. 3dly. They held, that this voidable probate, being the act of the superior, had so far taken away the power of the inferior, that he could not exercise his jurisdiction, till that voidable probate was avoided." The case was adjourned upon another point, nor does it appear, that the defendants were ever brought up for judgment. This case is, therefore, in opposition to the decision in *Sir John Nedham's* case, which decreed that the administration, which had been granted by the inferior court before the revocation of the Prerogative administration, was, after the revocation of such Prerogative, good and valid.

In *Robinson* v. *Wobley*, 29 *Car.* 2.; Sir W. Jones, 78; *Pargan* v. *Selby*, 14 Jas. I. 1 Roll's, 143, and in *Gold* v. *Strode*, 2 W. III. Carthew, 148, Counsel held that administration granted by the Prerogative Court, where there were not *bona notabilia*, was voidable by sentence, and not void.

2dly, The Cases by which it was decided that the probate of the Archbishop is void, when there are not *bona notabilia*.

In Mich. 26 Eliz. 4 Leonard 211, the case was in the

King's Bench, in debt; (*a*) "it was found by special verdict that the testator being possessed of divers goods in London, where he died, and also at the time of his death, the Queen being indebted to him in the sum of 4*l.* 10*s.*, she then residing at Whitehall; the Archbishop as Metropolitan granted licence of administration to the Queen; and the Bishop of London afterwards granted licence of administration to J. S. The court sent to the civilians to appear in court, and to deliver their opinions in this case. And thereupon *Lloyd*, Doctor of Laws, appeared and argued to this effect; viz. that in ancient times in such cases, the several ordinaries committed several administrations for the goods in their diocese respective; in which case, the mischief was very great, for the administrator was driven to bring several actions of the administrators of the several ordinaries: *vide*

(*a*) Although this case is anonymous, and did not receive the decision of the Court, yet the exposition of the law by the Counsel for the Plaintiff, is so in unison with the decision of Lord Coke, in the hereinafter cited case of *Porter* & *Rochester*, that it must be deemed most important. Here it is stated, "that the Archbishop had not to intermeddle with the diocese of another, but as *legatus Papæ*. And in the time of Hen. II., Becket, Archbishop of Canterbury, was styled *legatus natus*, but now their power legatine is determined, and therefore the authority to commit licences of administration except in cases of *bona notabilia*, is determined." In *Porter* & *Rochester's* case, Lord Coke says, "so as before, the Act of 23 Hen. VIII. the Archbishop of Canterbury was *legatus natus*, and by force of his authority legatine usurped against the Canons, upon all the ordinaries in his precinct, and by colour thereof claimed concurrent authority with them, which although they held in the Courts of the Archbishop, the same was remedied by the Act of 23 Hen. VIII. ch. 9, and all that which he usurped before, was not as he was Archbishop, for as to that he was restrained by the Canons, but as he was *legatus natus*, which authority is now taken away and abolished utterly." In the case in Leonard, the conclusion drawn from the premises is, that the administration of the Archbishop, where there are not *bona notabilia*, is actually void, and from *Porter* & *Rochester's* case, the same conclusion is inevitable.

H. VII. 13 R. 2, administrators 21. But afterwards upon a decree, upon a composition in such cases, the metropolitan committed the administration; and he said that the administration granted by the Archbishop was void, for as Archbishop he had not to intermeddle within the diocese of another, but as *legatus Papæ:* and in the time of Hen. II., Becket, Archbishop of Canterbury, was styled *legatus natus*, but now that power *legatine* is determined, and therefore the authority to commit licenses of administration in another diocese, but in case of *bona notabilia*, is determined. *Awbrey*, Doctor, argued to the contrary; and he confessed that in ancient times every ordinary in such cases committed licenses of administration; but he denied that the prerogative, which is now practised in such cases by the metropolitan, was given upon any composition, but that it began by prescription; but he said that *posito bona notabilia* are not in this case; yet the administration granted by the metropolitan is not void until it is revoked; for although that the metropolitan in the right of his bishoprick hath not to intermeddle in another diocese, yet in this case because the Archbishop of Canterbury is a Patriarch, (for in Christendom there are four great Patriarchs, and eight lesser Patriarchs, whereof the Archbishop of Canterbury is one,) and by reason thereof, he hath general jurisdiction through all England, Ireland, &c. But now by the statute his authority is restrained, for he cannot cite any other out of other diocese by any process; but notwithstanding he may do many great acts by himself, or his chancellor, in every diocese. And he argued very much upon the prerogative of the Archbishop of Canterbury. The justices did not then deliver any opinion in this case."

In *Bingham & Smeathwick*, in the Exchequer Chamber, 37 Eliz. Croke's Eliz. 455, the plaintiff had claimed title under an administration granted by the Archbishop of Canterbury, and the Court held that the pleading of such administration is not good, unless it is averred that the deceased had assets in divers dioceses, or within the diocese of Canterbury, or that the Archbishop was *loci illius ordinarius*. "But it was moved by *Coke*, the Queen's attorney, that the committing of administration being by the Archbishop, although he had not goods in divers dioceses, because it is in his province wherein he hath jurisdiction, is not void, but only voidable by sentence; and it is not like to an administration committed by another Bishop, of the goods of the man who died in another diocese, or who had goods in divers dioceses; and this difference had been taken and agreed in the Queen's Bench, and therefore, it was agreed that the plea was well enough; but the justices said that it was all one, and that the administration is void in both cases, and not voidable only."

In *Sir John Nedham's* case, 8 Coke, 135, "Arthur Post and Catherine his wife, administratrix of Elizabeth Weldish, brought an action of debt against Sir John Nedham (which plea began Mich. 7 James) in bond of 200*l.* made to the said Elizabeth: to which Catherine, the administration of all and singular the goods which the said Elizabeth had at the time of her death, was, after the death of the same Elizabeth, committed by William, by divine permission, Bishop of Rochester, at Rochester, on 5th February, 1605. The defendant pleaded, that after the death of the said Elizabeth, and before the commission of the aforesaid adminis-

tration, that is to say, on the 13th May, 1604, the Dean and Chapter of Canterbury being guardians of the spiritualties, *sede vacante*, of the Archbishop of Canterbury, committed administration of the goods, &c. of Elizabeth Weldish, to the defendant, because the said Elizabeth had *bona notabilia* in divers dioceses of the province of Canterbury, which administration committed by the said Dean, doth yet remain in force. The plaintiff replied, that after the said administration granted by the said Dean, &c. to the defendant, and before the purchase of this original writ, *sc.* 4th Nov. 1607, before Dr. Bennet, Commissary of the Prerogative Court of Canterbury, at the suit of the said Catherine, against the said defendant, the administration granted to the defendant was pronounced and declared null and void in every effect in law; upon which the defendant demurred in law. And in this case these points were resolved. "Forasmuch as the defendant had not shewn in his bar that the intestate had *bona notabilia* in certain, for this cause it shall be taken that the administration was granted where the intestate had not *bona notabilia* in several dioceses; but yet it was agreed that such administration was not void but voidable, as it was adjudged in *Hugh Vere's* case, as it appears in the fifth part of my Reports for 29 and 30. 2dly. It was objected, that forasmuch as the administration granted to the defendant was not void, but voidable, so long as it was in force, the inferior ordinary ought not to have committed administration, for the Prerogative administration granted by the Archbishop, and the administration granted by the inferior ordinary, cannot stand and be of effect together, and therefore confusion will ensue: and therefore the admi-

nistration granted by the inferior ordinary was utterly void; and although the said Prerogative administration be afterwards revoked, that shall not make the other administration of any better effect, than it was at the time it was granted, because what is void in the beginning, cannot become good by process of time. But it was answered and resolved, that now inasmuch as the ecclesiastical judge has pronounced and declared the letters of administration granted to the defendant null and void to every effect in law, we must give credit to them that it was for causes not appearing to us void from the first. *Vide* 17 Eliz. Dyer, 339, the like judgment upon the same reason. Also, the administration is but an authority (*a*), because he has nothing to his own use, but all to the use of another, and an authority may expect and commence *in futuro*, and therefore it shall be suspended until the other be repealed or declared void."

The case of *Porter & Rochester* (*b*), which was decided in 6 James, and five years after the establishment of the Canons of 1603, 13 Coke's Reports, p. 7, relates to the citation of a person out of Essex, which is in the diocese of London, into the Court of Arches, which was held in a peculiar belonging to the Archbishop of Canterbury, but situate within the diocese of London; it was decided that, under the provisions of the act of 23 Hen. VIII., c. 9, the citation could not be supported: the case is reported at great length, and the following forms part of the decision. "There is a saving for the Archbishop calling any person out of a diocese, where he shall be dwelling, to the probate of any testament; which proviso would be in vain, if

(*a*) See Dyer, 339. (*b*) Mich. Term, 6 Jas. 1.

the Archbishop, notwithstanding that act, should have concurrent authority with every ordinary through his whole province; wherefore it was concluded, that the Archbishop, out of his diocese, is prohibited by the Act of 23 Hen. VIII., unless, in the cases excepted, to cite any man out of any other diocese. And whereas it is said, in the preamble of the act, in the Arches Audience and other high courts of the Archbishops of this realm: it is to be known that the Archbishops of this realm, before that act, had power legatine from the Pope, by which they pretended to have not only supereminent authority over all, but concurrent authority with every ordinary in his diocese, not as Archbishop of Canterbury, &c., but by his power and authority legatine, so as before that Act, the Archbishop of Canterbury was *legatus natus*, and by force of his authority legatine, usurped against the Canons upon all ordinaries in his precinct, and by colour thereof claimed concurrent authority with them, which although they held in the Courts of the Archbishop, the same was remedied by the act of 23 Hen. VIII., c. 9; and all that which he usurped before was not as he was Archbishop, for as to that he was restrained by the Canons, but as he was *legatus natus*, which authority is now taken away and abolished utterly."

In *Turner & Vansdal*, 25 Car. II. 3 Keble, 262, *Serjeant Hardy* prayed prohibition for the administration in a Canterbury peculiar, in suit by the defendant in prerogative, supposing a will and *bona notabilia*, which the plaintiff said were none, *sed non allocatur; per Curiam*, if there be no *bona notabilia*, the administration in the prerogative is void (8 Cr. 457) and the first administration stands; and the prohibition was denied.

OBSERVATIONS ON THE CASES.

On a review of the cases that have been determined on the subject of the probate or administration of the Archbishop being voidable, or void, when there are not *bona notabilia*, some will be found to have decided them to be voidable, and others void. "If an administration committed to a creditor be afterwards repealed at the suit of the next of kin (*a*), the creditor shall retain against the rightful administrator, and all dispositions of goods by him, pending the citation, shall stand; for this is not like the case of an administration granted by a bishop of an inferior diocese, where the intestate had *bona notabilia*, in divers dioceses, because there such administration is actually void." An administration is void when granted by a wrong ordinary, and voidable when granted to a wrong person; that is to say, when an administration is granted by a Court, not having jurisdiction, it is actually void. There is no doubt of the application of this rule to the Courts of the Bishops and other inferior ordinaries. In what respect, then, does the Prerogative Court differ from them? It is universally allowed that all the original jurisdiction belonged to the Bishops (*b*), and "that they committed several administrations for the goods in their respective dioceses, when the deceased left goods in divers dioceses,

(*a*) *Per Sir John Holt, Blackorrugh* v. *Davis*, 1 P. Williams, 43. *Vide* 1 Salk. 38. S. C. 6 Coke, 18. Coke's Eliz. 460. Moore, 396. *Ravenscroft* v. *Ravenscroft*, 1 Lev. 305.

(*b*) 4 Leonard, 211. 2 Bl. 509.

in which case the mischief was very great, for the creditor was driven to bring several actions of the administrators of the several ordinaries: but afterwards upon a decree upon a composition in such cases, the metropolitan committed the administration." The ordinary had, therefore, the original right to prove wills, and grant administrations of all persons dying within his diocese, and it was only by reason of the goods out of such diocese, that the Prerogative Court became entitled to the probate or administration (*a*). If, therefore, the probate or administration of the ordinary can be considered as actually void, when he is only deprived of his jurisdiction, by the fact that the deceased had goods in another diocese; the reason is more forcible for considering a Prerogative administration void, where there are not *bona notabilia* in another diocese; for the jurisdiction of the prerogative Court is solely dependent upon the fact of there being *bona notabilia* in another diocese. But the reasons assigned, why the probate granted by the Prerogative Court should be voidable only by sentence, are, that the Archbishop has jurisdiction over the whole province (*b*), that he was the first Bishop and divided his province amongst his suffragans (*c*), and that he was one of the Patriarchs (*d*); meaning, thereby, that he had concurrent jurisdiction throughout the whole province. But all such concurrency of jurisdiction, if, in truth, he ever had such, was prohibited or repealed by the Statute of Citations, 23 Hen. VIII., c. 9, and is altogether overthrown by the decision in

(*a*) Canons 92 and 93.
(*b*) 5 Coke, 30.
(*c*) 3 Bulstrode, 176. Hobart, 185.
(*d*) 4 Leonard, 211. 13 Coke, 5.

the case of *Smeathwick* v. *Bingham;* it being there decided, that, to support any pleadings by executors or administrators, acting under probates or administrations granted by the Archbishop of Canterbury, such probates or administrations must be stated to have been granted by the Archbishop where there were *bona notabilia,* or where all the goods were in the diocese of Canterbury, or as ordinary of the place; for that otherwise the pleadings would be set aside. And it must be observed, that the principle of the case of *Vere and Jefferies,* upon which the doctrine, that the prerogative probate or administration, when there are not *bona notabilia,* is only voidable by sentence, depends, was overruled in the Exchequer Chamber in the case of *Smeathwick* v. *Bingham; Sir Edward Coke,* (then Attorney General), having as counsel cited it, when the Court declared such a probate or administration to be void.

The first legal acknowledgment of the Prerogative Court, was by the statute 23 Hen. VIII., c. 9, the proviso in that statute reserving to the Archbishop the power of citing any person out of a diocese only, in respect of his prerogative; now this prerogative had been previously defined by the composition of 1513, and this composition was embodied into the canons of 1603, and the 93d Canon expressly declares that no judge of the Archbishop's prerogative should thenceforward cite, or cause to be cited, *ex officio,* any person whatsoever to any of the aforesaid intents, (for probate of will, &c.,) unless it should first appear to him, ("*nisi prius constiterit*" in the original Canon,) that the party deceased, was, at the time of his death, possessed of goods and chattels in some other diocese or dioceses, or peculiar

jurisdiction within that province, than in that wherein he died, amounting to the value of *5l.*, at the least; decreeing and declaring that whoso hath not goods in such case (*"in hoc casu"* in the original Canon,) to the said sum or value, should not be accounted to have *bona notabilia*. Provided always, that if any judge of the prerogative, or any his surrogate, register, or apparitor, should cite, or cause any person to be cited into his Court, contrary to the tenor of the premises, he should restore to the party so cited, all his costs and charges; and we do pronounce the acts of the same to be held *ipso jure*, void and of no effect (*" et acta ejusdem ipso jure vacua et pro nullis habenda pronunciamus,"* in the original Canon). If it is assumed that the Canons do not take away from the Prerogative Court, the right of granting probates and administrations when the parties voluntarily require them, it is answered that if a voluntary jurisdiction had been intended, it would have been reserved to the Archbishop in this Canon, in the same manner as the voluntary jurisdiction, in cases of *bona notabilia* in another diocese, is reserved to the inferior Courts by the 92d Canon. No such reservation could however have been in contemplation, for the jurisdiction of the Archbishop extends only to those cases where there are *bona notabilia* in some other diocese or peculiar jurisdiction than that wherein the party died; and the jurisdiction in all cases, where there are not *bona notabilia*, belongs to the Bishop and inferior ordinaries, as it is secured to them by the ancient canons, which are not only sanctioned and confirmed by time and practice, but more especially by the statute of 25 Henry VIII., c. 19.

The conclusion, therefore, is, that if the Prerogative

Court grants a probate or administration where there are not *bona notabilia*, it makes a grant where it has no jurisdiction, and where the jurisdiction belongs to another Court, and such a grant in this, as in all similar cases, cannot be otherwise than *coram non judice*, and consequently actually void (*a*).

Should the decisions in the Courts of Common Law, be relied upon as sanctioning the practice of considering the Archbishop's probate voidable only, where there are not *bona notabilia* in another diocese, it will be seen on a careful examination, that those, which decide the probate or administration to be void, have a great preponderance, both as regards the cases themselves, and the correctness of the principle upon which they are decided; whilst those which declare the probate or administration to be voidable only by sentence, were founded on the ground, that the Archbishop had a concurrent jurisdiction; which, whatever it might have been previous to the statute of 23 Hen. VIII., certainly did not exist at the time of the decision of these cases. When, therefore, it is considered that those cases, which make the probate or administration void, coincide with the provisions of the Canons, and that consequently those cases, which make them voidable only, are in direct opposition to the intent and effect of the Canons, there cannot be any reason, either from the force of the cases decided, or from the principle on which they are decided, or otherwise, for deeming a probate or administration granted by the Prerogative Court, where there are not *bona notabilia* in another diocese, otherwise than void.

(*a*) Hob. 53.

CHAPTER V.

THE BISHOP'S DIOCESAN COURT.

"DIOCESIS *dicitur distinctio, vel divisio sive gubernatio, quæ divisa et diversa est ab ecclesia alterius episcopatus, et commissa est gubernationi unius:* diocese signifies the jurisdiction of one ordinary separated and divided from others."—13 Coke's Reports, 5.

"Ordinary, according to the acceptation of the Common Law with us, is usually taken for him, that hath ordinary jurisdiction in causes ecclesiastical immediate to the King. He is in common understanding the Bishop of the diocese, and for most part visitor of all his churches within his diocese, and hath ordinary jurisdiction in all causes for the doing of justice within his diocese, *in jure proprio et non per deputationem. Ordinarius habet locum principaliter in Episcopo et aliis superioribus, qui soli sunt universales in suis jurisdictionibus, sed sunt sub eo alii ordinarii, hi videlicit, quibus competit jurisdictio ordinaria de jure, privilegio, vel consuetudine.*"—Godolphin's Ecclesiastical Law, 32.

"Though the probate of wills does of common right belong to the Bishops, according to the Canon

Law, yet according to John de Athon, in a legatine constitution, this power may accrue to inferior ordinaries; and hence it is that Archdeacons, Deans of Churches, and Abbots, sometimes have the probate of wills, &c.; and even Lords of Manors, in right of Abbots."—2 Ayliffe's Parergon Juris., 534.

"The insinuation or registering of wills is the publication of wills as the Acts of Court, and according to the custom of England, this belongs to the Ecclesiastical Courts; that is to say, to the Bishops and their officials, and by the like custom, so does the approbation of them too."—2 Ayliffe, 534.

"The person, before whom the testament is to be proved, is the Bishop of the diocese, to whom, by the ancient custom observed these many hundred years, together with the Royal consent of Kings and Princes of this land, the probation and approbation of testaments hath appertained" (*a*). 2 Swinburne on Wills, 771.

"If all the goods of the deceased lie within the same jurisdiction, a probate before the ordinary, or an administration granted by him, are the only proper ones."—3 Black. Com. 309.

The ancient constitutions and documents, as before set forth, respecting the jurisdiction in probates and administrations, and particularly the composition between Walter, Archbishop of Canterbury, and John Dalderby, Bishop of Lincoln, afford incontrovertible evidence, that the whole of the testamentary jurisdiction in the Diocese of Lincoln, originally belonged to the Bishop of the Diocese, and more particularly so at the date of the composition.

(*a*) Swinburne was first published in 1590.

The dispute between the Archbishop of Canterbury, and the Bishop of Lincoln, related to the right of granting probates and administrations, where the parties dying left goods in some other diocese than the diocese of Lincoln, and the composition of 1319, is an acknowledgment by the Archbishop of Canterbury, that such right belonged to the Bishop of Lincoln; and the Bishop of Lincoln regularly proved the wills of all persons dying within the diocese, even when they, at the time of their death, had goods in divers dioceses, of which there are very numerous instances from the date of the composition. In divers appointments of commissaries of Archdeaconries, special power was given to the commissaries to prove the wills of all persons dying in the diocese of Lincoln, and having goods in divers dioceses; and it is remarkable, that on the Metropolitan Visitation of the diocese of Lincoln, by Archbishop Cranmer, the Bishop of Lincoln granted the probate &c., of all the wills proved during that Visitation.

Comparing these circumstances with the reservation in the 92d Canon, of all compositions between the Archbishop and any Bishops, from the operation of the same Canon, this composition relating to the diocese of Lincoln, must be one of those referred to by this Canon: and as the Prerogative Court is a new jurisdiction, when compared with that of the Bishops, and as it was established by the Canons of 1603, it must derive its authority from those Canons; and as its authority must be supported by these Canons, they ought to be equally effective in supporting the jurisdiction of the Bishop. At all events, the composition, and the practice under it, abundantly prove that the Archbishop had no concurrent jurisdiction with the

Bishop of Lincoln in testamentary matters, and consequently his Prerogative Court must, as to the diocese of Lincoln, be guided strictly by the Canons.

The Bishop of Lincoln therefore is still entitled to exercise testamentary jurisdiction, throughout the whole diocese, except in Royal Archiepiscopal and Manorial Peculiars; and although several other Courts, such as those of the Dean and Chapter, Prebendaries, and Archdeacons, by composition or usage, and of the Commissaries by their appointment, may have right of probate, &c., yet in all cases to which their jurisdictions do not extend, as when a person dies in one such jurisdiction, and has goods in another, within the diocese, the Bishop has a right to the probate or administration.

CHAPTER VI.

JURISDICTION OF DEAN AND CHAPTER AND PREBENDARIES.

THERE are twenty-four parishes in the county of Lincoln, over which the Dean and Chapter of Lincoln exercise jurisdiction; and there are several other separate parishes, over which the respective Prebendaries who derive the name of their prebends from those parishes, separately exercise jurisdiction. The jurisdictions of the Dean and Chapter and Prebendaries were originally granted to them by Robert, Bishop of Lincoln, about the year 1160 (*a*), to exempt them from Archidiaconal jurisdiction; and their appeal is, by the statutes of the church of Lincoln, reserved to the Bishop. The present practice is in accordance with the original grant, and their jurisdictions are inhibited for three months once in every three years, at the time of the Bishop's primary and triennial visitations, and all jurisdiction in them is, during the inhibition, exercised by the Bishop and his Chancellor; but during the remainder of the three years, the Dean and Chapter and Prebendaries exercise jurisdiction in their respective parishes. Accord-

(*a*) See Appendix I., No. 5.

ing to the case of *Beare & Biles* v. *Jacob*, Hilary Term, 1829, 2 Haggard's Reports, 263, these jurisdictions are not peculiar and exempt jurisdictions, but subordinate to the Bishop, and in relation to the jurisdiction of the Prerogative Court, in cases of *bona notabilia*, can be considered only as a part of the diocese of Lincoln; and when persons die or leave *bona notabilia* within such jurisdictions, their wills or administrations cannot be subject to the Prerogative Court, except where such person shall leave *bona notabilia*, or die within some peculiar belonging to the Archbishop of Canterbury, or within some peculiar belonging to some other diocese, or within some other diocese than the diocese of Lincoln. See, however, the subsequent enquiry into the nature of peculiar and exempt jurisdictions.

In case of a person dying within one such jurisdiction, or within any Commissaryship or Archdeaconry, and having goods to the value of 5*l.* in any other such jurisdiction, Commissaryship, or Archdeaconry, the probate of his will, or the administration to his effects should be granted by the Bishop, or his Chancellor; for a probate or administration so granted will be effectual throughout the diocese; but a probate or administration granted by the official or judge of any such jurisdiction, Commissaryship, or Archdeaconry, will be of no avail beyond the jurisdiction, within which it is granted.

CHAPTER VII.

COURTS OF THE COMMISSARIES FOR THE ARCHDEACONRIES.

THE Bishop, by patent, appoints a Commissary for each Archdeaconry in his diocese, and such Commissary is the Bishop's representative within the Archdeaconry, and amongst other things, exercises testamentary jurisdiction. At the passing of the act of 24 Hen. VIII. the Commissaries were appointed during the pleasure of the Bishop, but they now receive their appointments for their lives. But although the Commissary represents the Bishop, yet as the jurisdictions of the Dean and Chapter and Prebendaries, are exempt from the Archdeacon, and consequently do not form part of the Archdeaconry within which they are situated, the jurisdiction of the Commissary cannot extend over them, for it only extends over the same parishes and places as the jurisdiction of the Archdeacon. In the case of *The King against W. Younge, D.D.* the Court decided that "the appointment of the Bishop, as it regards the power of the Commissary to prove wills, arms him with episcopal authority for that purpose. The grant of the power attracts to it all the means by which that power can be exercised. The Commissary is Bishop for the purpose of proving such wills, as he is authorised by the grant to prove." It is

difficult to understand the case, but as the authority of the Commissary extends only over the Archdeaconry, it can only have been decided, that he had Episcopal authority over such Archdeaconry; and the return to the *mandamus* issued in this Case having stated that the probate was as valid in law, as if it had been granted by the Vicar-General, in the said Consistorial or Episcopal Court, and that the Court of the Archdeaconry of Sudbury had possession of the original will, and denied that the defendant had authority to issue a monition, the confirmation of the return by the Court, could be considered only as deciding that the probate was valid, and that the defendants had no right to issue a monition.

The Commissary is inhibited from exercising jurisdiction, for three months, once in three years, at the time of the Bishop's primary and triennial visitations, and his jurisdiction is, consequently, subordinate to the Bishop. See *Beare & Biles* v. *Jacob*, 2 Haggard's Reports, 263.

The Commissary, mentioned in the statute of 24 H. VIII. c. 5, must have been intended for the Bishop's vicar-general and official principal, or chancellor, and not for his Commissaries in the archdeaconries; for the vicar-general and official-principal was formerly appointed by the Bishop, to supply his place in his diocesan Court (*a*), when urgent business required his absence from his diocese; and consequently the acts speeded in the diocesan Court must have had the same effect, whether the Bishop himself or his vicar-general and official-principal presided. If the appeal be from the Bishop to the Archbishop, the appeal from the vicar-

(*a*) Smith's Memorandums, 2 and 118, *annis* 1495, 1499.

general and official-principal must necessarily be the same; and this must have been the view taken by the framers of the statute, for it speaks of the Bishop or his Commissary, as of persons, that, at different times, presided over the same Court: in the same manner as it mentions the Archdeacon or his official. If the statute had intended the word Commissary to comprehend the Commissaries of the Archdeaconries, the conjunction would have been copulative, as comprehending the Courts of the Commissaries as well as that of the Bishop, and not disjunctive; for the Commissaries of the Archeaconries were appointed to hold their Courts within those Archdeaconries, because the Bishop himself could not conveniently hold his diocesan Court there. It is laid down by *Sir John Nicholl*, in the case of *Parham & Templar* (*a*), that the visitation and appeal necessarily go together. Now, as the Commissaries of the Archdeaconries are the mere delegates of the Bishop, as their jurisdictions are periodically inhibited by him for three months once in three years, and as during such inhibition the Bishop not only visits all the districts comprised within the jurisdiction of the Commissaries, but his chancellor exercises all ecclesiastical jurisdiction within such districts during the inhibition, the jurisdiction of the Commissaries must be subordinate to the Bishop, and being so, the appeal from the Commissaries must be to the Bishop, as to their immediate superior (*b*). If the word Commissary in the statute, is considered as applicable only to the Bishop's chancellor, all the jurisdictions are clear and intelligible; but if it is construed to comprise the Commissaries of the Archdeaconries,

(*a*) 3 Phillimore's Reports, 246. 186; 1 Oughton, 404, title, 274.
(*b*) 6 Mod. Rep. 308; Hob. 16,

then the various jurisdictions of the diocese become confused, and irreconcileable with the principles laid down as regulating them. And that the Commissary mentioned in the statute must have been the chancellor of the Bishop, is to be collected from the ancient practice as laid down in Linwood (*a*), where, after mentioning the vicar-general and official principal of the Bishop, it is said, "I estimate differently the officials for foreign parts (*officiales foranci episcoporum*). Nor does it make any difference if they say that they have jurisdiction in all causes; inasmuch as they have not general jurisdiction with the Bishop, but particularly in a certain district, or in a certain place belonging to the jurisdiction of the Bishop, and such officials have not the same consistory with the Bishop, but the appeal is from them to the Bishop." And it is further said in Linwood (*b*), "I ask in what these official principals differ from other judges deputed by the Bishops. First, they have the same Court of Audience with the Bishops, nor is the appeal from them to the Bishops, but to those to whom the appeal is made from the Bishops themselves. Nor yet is it so in others, who are not official principals; such as officials for foreign parts, who are deputed even for the decision of causes of all descriptions, in a certain part of a diocese. But from these others the appeal must be to the Bishop himself. And they differ also in this, that the official principals are ordinaries, but the others are delegates." The same principles are laid down by Ayliffe (*c*).

If it is said that the appeal from the Commissaries of the Archdeaconries has, according to the practice of late years, been to the Archbishop, and not to the

(*a*) Linwood, 80, note.
(*b*) *Ibid*, 105, note.
(*c*) Ayliffe, Par. 76, 163; 1 Oughton, 404, title, 274.

Bishop; such practice has so obtained a footing in violation of the ancient laws and ancient practice regulating such appeals, and in opposition to the principles at present laid down for ascertaining to whom an appeal should be made; for if the visitation and appeal go together, the appeal from the Commissaries of the Archdeaconries in the diocese of Lincoln must be to the Bishop, it being incontrovertibly clear that the Bishop has always exercised, and still exercises his right of visitation in the Commissaryships.

The observations which, on treating of the jurisdiction of the Dean and Chapter and Prebendaries, were made in respect of the jurisdiction of the Prerogative Court, are applicable to the jurisdiction of the Commissaries; with this addition, that there can be no pretence for giving to the jurisdictions of the Commissaries, either the name or title of peculiars and exempt jurisdictions, or, consequently, for considering them to be subject to the jurisdiction of the Prerogative Court, except as part of the diocese. For if on a person's dying, or leaving *bona notabilia* in any such jurisdiction, and leaving *bona notabilia* or dying in another part of the same diocese, the probate or administration should be deemed to belong to the Prerogative Court, these jurisdictions must be considered to be distinct from the diocese, and exempt from the jurisdiction of the Bishop. Where then would be the diocese, if all the Commissaryships were to be so considered? And it would lead to this absurdity, that the Commissaryships of the Archdeaconries would be exempt from the Bishop, whilst the jurisdictions of the Archdeacons, which extend over the same parishes and places, as the jurisdictions of the Commissaries, would not be exempt from the Bishop.

CHAPTER VIII.

THE COURTS OF THE ARCHDEACONS.

The Archdeacons are collated to their Archdeaconries by the Bishop, and installed by the Dean and Chapter. They exercise testamentary jurisdiction, but it is not known whether they have derived it by composition, or usage only. It is, however, inhibited for three months once in three years, in the same manner as that of the Commissaries, and is subordinate to the Bishop. See *Beare and Biles* v. *Jacob*, 2 Haggard's Reports, 263.

With respect to the jurisdiction of the Prerogative Court, in relation to the Archdeaconries, reference must be had to the observations on the jurisdictions of the Dean and Chapter, Prebendaries, and Commissaries.

CHAPTER IX.

PECULIAR JURISDICTIONS.

If any doubt should be entertained whether the 92d and 93d Canons are applicable only to the peculiars belonging to the Archbishop of Canterbury, or whether they may extend over other peculiars, it will be necessary to enquire into the nature of Peculiar Jurisdictions; and,

I. What is a peculiar and exempt jurisdiction?

II. What jurisdictions come under the denomination of a peculiar and exempt jurisdiction.

III. What jurisdictions are not exempt from, but subordinate to, the Bishop of the diocese.

IV. What peculiars are subject to the Prerogative Court, by reason of a person having, at the time of his death, goods or good debts to the value of *5l.* in another peculiar or diocese than in that wherein he died.

I. What is a peculiar and exempt jurisdiction?

Ayliffe, in his *Parergon Juris Canonici Anglicani*, gives the following description of peculiars, in p. 417.

"There are many peculiar or exempt jurisdictions in England, to the great inconvenience and hardship of the subject: but these are not called exempt jurisdictions, because they are under no ordinary, but because they are not under the ordinary of the diocese, but have one of their own."

In p. 419 of the same work, he adds:—"All such parishes and places which we call peculiars, are exempted from the jurisdiction of the proper ordinary of the diocese where they lie, not only in respect to the probates of wills, and granting letters of administration which are matters of voluntary jurisdiction, and the like; but also exempt from the cognizance of all matters of contentious jurisdiction: and whenever they have reason to appeal a cause from their own ordinary, it is to the King in his High Court of Chancery, and not to the Bishop of the diocese, or the provincial Archbishop."

"A peculiar *prima facie* is to be understood of him that has jurisdiction co-ordinate with the Bishop."—6 Mod. Rep. 308.

In the case of *Parham* v. *Templar*, 3 Phillimore's Reports, 248, *Sir John Nicholl*, after taking a general review of the nature of peculiars, says—"the general result of this, is, that a peculiar is not subordinate to, but co-ordinate with the jurisdiction of the Bishop."

From these authorities, it is to be collected that a peculiar and exempt jurisdiction is not subordinate to, but co-ordinate with the jurisdiction of the Bishop of the diocese in which it is situated; and that the Ecclesiastical jurisdiction there is exercised solely by the Dean and Chapter, Prebendary, &c., or their respective officers, without being subject to the controul and

visitation of the Bishop, and without having their appeal to him.

II. What jurisdictions come under the denomination of a peculiar and exempt jurisdiction.

1st. "Of these peculiar and exempt jurisdictions, there are several sorts, viz., Royal peculiars, which are the King's free chapels, and those are exempt from any jurisdiction but the King's: and, therefore, such may be resigned into the King's hands as their proper ordinary, either by ancient privilege or inherent right. But how far resignation may be made into the King's hands, as supreme ordinary, as in *Goodman's* case, it is not here a place to examine. 2d, Archbishops had, and have still, their peculiars, which are not only in the neighbouring dioceses, but dispersed up and down in remoter places; for it appears by Eadmerus, that wherever the Archbishop had an estate belonging to him, he had the sole jurisdiction as ordinary. 3d, Deans and Chapters had likewise their peculiars; which are places wherein, by ancient composition, the Bishops have parted with their jurisdiction as ordinaries to those societies, whose right was not original, but derived from the Bishop; and when the composition is lost it depends upon prescription, as in the Deans and Chapters of St. Paul and Litchfield, which are mentioned in the Year Books. And lastly, monasteries had also their peculiars belonging to them."—Ayliffe's Parergon, 418.

"I have said before, that Deans and Chapters have their peculiars by ancient composition from the Bishops, as ordinaries to those bodies of men. But where these compositions are lost, and there has been a constant usage, time out of mind, for these societies to grant

institutions, they may in such cases maintain their right by prescription, and this is done by the Dean and Chapter of St. Paul's in London, and by the Dean and Chapters of York and Litchfield."—Ayliffe, 418.

"There are Royal peculiars and Archbishop's peculiars; the King's Chapel is a Royal peculiar, exempted from all spiritual jurisdiction, and referred to the immediate government of the King; there are also some peculiar ecclesiastical jurisdictions belonging to the King, which formerly appertained to monasteries and religious houses. It is an ancient privilege of the See of Canterbury, that wherever any manors or advowsons belong to it, they forthwith become exempt from the ordinary, and are reputed peculiars of that See; not because they are under no ordinary, but because they are not under the ordinary of the diocese, &c.; for the jurisdiction thereof is annexed to the Court of Arches, and the Judge thereof may originally cite to these peculiars of the Archbishop."—Wood's Institute, 530.

The several peculiars which are also exempt jurisdictions are, 1st, The King's peculiars; 2d, The Archbishop's peculiars; 3d, The peculiars of some Deans and Chapters, as of St. Paul's, of the Dean and Chapter of Salisbury, of the Dean and Chapter of Lichfield, &c.; 4th, Peculiars of Monasteries; but as the exemption of each Dean and Chapter from the jurisdiction of the ordinary must depend upon the compositions entered into with their respective Bishops, or in cases where such compositions have been lost, upon the usage, as proof of the composition, it is presumed that no general rule can be laid down upon the subject, either that the jurisdictions of Deans and Chapters are, or are not, peculiars and exempt from the ordinary of their respective dioceses; but that

some Deans and Chapters exercise jurisdictions subordinate to the Bishop will appear by the third division of the subject.

III. What jurisdictions are not exempt from, but subordinate to, the Bishop of the diocese.

"There are some peculiars which belong to Deans and Chapters, or a Prebendary, exempted from the Archdeacon only; they are derived from the Bishop, of ancient composition, and may be visited by the Bishop in his primary or triennial visitations; in the meantime the official of the Dean and Chapter, or Prebendary, is the Judge; and from hence the appeal lies to the Bishop of the diocese.—Wood, 530. Appeal lieth from other peculiar Courts to the King in Chancery.—Stat. 25 Hen. VIII. c. 19. The Dean and Chapter of St. Paul's have a peculiar jurisdiction; and the Dean and Chapter of Salisbury have a large peculiar within that diocese; so have the Dean and Chapter of Lichfield," &c.—2 Nelson's Abridg. 1240, 1241.

"If a peculiar be subordinate to the Bishop, then he cannot refer a cause to the Archbishop, but to the immediate ordinary, as an Archdeacon or Commissary must do; otherwise it is, if the peculiar have his immediate resort to the Archbishop."—Hob. 186.

Holt, C. J., says, "There are three sets of peculiars; the first is when Archdeacons, &c., have a peculiar within the diocese, and subject to the jurisdiction of the ordinary; second, when one has a peculiar not subject to the ordinary, but to the Archbishop; and the third is when one has a peculiar, subject neither to the ordinary nor to the Archbishop, as there are some.

And though the Dean of Sarum is to some purposes subject to the jurisdiction of the Bishop, yet as to this peculiar, it is all one, as if it was a stranger; and it is not under the jurisdiction of the Bishop of Sarum, more than of the Bishop of London."—Skinner's Reports, 589.

" All peculiars are not inferior to the ordinary of the diocese in which they are; and such as are not cannot transmit any cause to the ordinary, and such transmitting must always be to the immediate superior; the Dean and Chapter of Salisbury have a large peculiar within the limits of the Diocese, but as much out of the jurisdiction of the diocese of Sarum as the diocese of London is. The peculiar jurisdiction of an Archdeacon is not properly a peculiar, but a subordinate jurisdiction."—*Per* Lord Ch. J. *Holt*, 6 Mod. Rep. 308.—*Vide* Hob. 185, 186.

From the introductory words in the case last cited, it may be presumed, that it was the opinion of Lord *Holt*, that the majority of peculiars are subject to the jurisdiction of the diocesan.

In *Parham & Templar*, 3 Phill. 246, " There is a third description of peculiars, which are still subject to the Bishop's visitation, and being so, are still liable to his superintendence and jurisdiction. Wood in his *Institute* mentions these. He says, " These the Bishop visits at his first and triennial visitations. Here the appeal lies from the peculiar to the diocesan, but the right of appeal and the right of visitation seem almost necessarily to go together." *Per Sir John Nicholl.*

In the case of *Beare and Biles* v. *Jacob*, Hilary Term, 1829, 2 Haggard's Reports, 257, the main question related to the jurisdiction of the Subdean of

Sarum. *Sir John Nicholl* says, "The first point which hardly admits of any question, either of fact or law, has been but little pressed in argument. The instrument of appointment of the Subdean has been exhibited, and is merely subordinate and archidiaconal: the Bishop visits and inhibits: during his visitation the Subdean's jurisdiction is wholly suspended, and is merged in and exercised by the Bishop as in ordinary archdeaconries. This jurisdiction of the Subdean of Sarum is well ascertained, and has been made more public by the return to Parliament, in the last Session, of courts exercising ecclesiastical jurisdiction. 'In the diocese of Sarum,' it is stated, 'the Bishop of Sarum, by his chancellor, exercises the authority of granting probates and administrations in the subdeanery of Sarum, during the Bishop's triennial visitation for six months, only containing five parishes. The Subdean of Sarum exercises the (above) authority, except for six months every third year as aforesaid.' This return confirms what appears from the instruments of appeal, and from the appointment of the Subdean, that he is appointed by the diocesan, and has a mere subordinate jurisdiction; and his jurisdiction being subordinate, and not peculiar and exempt, no doubt in common cases the appeal lies to the diocesan, and not *per saltum* to the Archbishop."

Although Lord *Holt*, in the case of *Johnson & Ley*, called the jurisdiction of archdeacons, &c. peculiars, within the diocese, and subject to the jurisdiction of the ordinary; yet in the case, in 6 Mod. Reports, his Lordship stated that the jurisdiction of an archdeacon is not properly a peculiar, but a subordinate jurisdiction. The case of *Beare and Biles* v. *Jacob*, was determined upon the same principle, and has ren-

dered clear the distinction, that those jurisdictions only are peculiars which are exempt from the Bishop of the diocese in which they lie, and that the jurisdictions of deans and chapters, prebendaries and archdeacons, which are subject to the visitation of the Bishop, are inhibited from exercising jurisdiction during such visitation, and have their appeal to his consistorial court, are subordinate jurisdictions, and not peculiars.

IV. What peculiars are subject to the jurisdiction of the Prerogative Court, by reason of a person having at the time of his death goods, or good debts, to the value of 5*l.* in another such peculiar, or in another diocese.

It is laid down in the case of *Parham & Templar*, "that in the cases of wills and administrations, where there are *bona notabilia*, peculiars are considered as separate jurisdictions, and not as being part of the diocese; for if there are *bona notabilia* in a diocese under the ordinary jurisdiction of the Bishop, and also in a peculiar in that diocese, or in two peculiars situated within the same diocese, in such case the probate belongs to the Archbishop. It is so expressly laid down by Gibson (*a*), Swinburne (*b*), and in a case in Siderfin (*c*); and it is declared by those authorities, that in such case probate shall be granted, not by the diocesan, but by the Archbishop, *because such peculiars are exempt from the jurisdiction of the diocesan.* The distinguishing feature, therefore, by which peculiars may be known to be subject to the Prerogative Court, by

(*a*) Gibson's *Codex*, 565.
(*b*) Swinburne, 772.
(*c*) *Tull* v. *Osberon*, 1 Sid. 90. 1 Keble, 367.

reason of there being *bona notabilia*, is that such jurisdictions are exempt from the controul and superintendence of the Bishop of the diocese, in which they are situated; or to which they belong; and the evidence of their exemption consists in the fact of their not being subject to the Bishop's visitation, and by their not having their appeal to him. On the other hand, wherever ecclesiastical jurisdictions are periodically inhibited by the Bishop, and are subject to his visitation, and have their appeal to him, they are not peculiar jurisdictions, but subordinate to the Bishop, and not being peculiars, are not subject to the jurisdiction of the Prerogative Court, either in cases of persons dying in them, and having at their deaths goods in any similar jurisdiction or in the diocese in which such jurisdictions are situated; or in cases where the parties die in the diocese, in which these jurisdictions are situate, and have, at the time of their deaths, goods to the value of *5l.* in any such jurisdiction or jurisdictions.

APPENDIX I.

No. I.

Copy of the Composition entered into between Walter, Archbishop of Canterbury, and John Dalderby, Bishop of Lincoln, in 1319.

NOVERINT universi præsentes literas inspecturi quod cum inter pie memoriæ Dominum Robertum Cantuariensem Archipiscopum totius Angliæ primatem ex parte una, et Dominum Johannem Dei gratia Lincolniensem episcopum ex altera, occasione probationum sive insinuationum et commissionum administrationum bonorum necnon redditionum ratiocinii executorum testamentorum eorum qui dum vixerint plura bona spiritualia sive temporalia in civitate et diœcesi Lincolniensi necnon et in aliis diœcesibus vel diœcesi provinciæ Cantuariensis aut in locis aliis ecclesiæ Cantuariensi immediate subjectis hactenus habuerunt ubicunque obierint quas probationes insinuationes commissiones ratiocinii redditiones cognitionesque causarum quæ per creditores et legatarios vel quoscunque alios querulantes contra executores testamentorum hujumodi pro bonis præcipue hujusmodi decedentium in sua civitate vel diœcesi existentibus ad se et ecclesiam suam Lincolniensem

* This composition is registered in Dalderby's Memorandums, fol. 409, and other books of registry, in the Registry of the Lord Bishop of Lincoln, at Lincoln; in the Registry of the Dean and Chapter of Lincoln; in the Registry at Lambeth Palace, Lib. 585, p. 321. See Index of the Documents at Lambeth Palace, p. 85.

pertinere debere constanter asseruit tam de jure quam de hactenus approbata pacifice observata et obtenta consuetudine ac præscripta. Præfato domino Archiepiscopo contrarium asserente orta fuisset materia questionis cujusmodi occasione inter dictum Episcopum Lincolniensem partem appellantem et præfatum Archiepiscopum partem appellatam in Romana curia lis penderet et pendeat in præsenti. Demum hujus quæstionis et litis materia inter reverendum patrem dominum Walterum Dei gratia Canturariensem Archiepiscopum totius Angliæ primatem qui nunc est et dictum dominum Johannem episcopum Lincolniensem in forma quæ sequitur perpetuo valitura amicabiliter conquievit. Videlicet quod dictus episcopus Lincolniensis et successores sui episcopi jure ordinario perpetuis temporibus in futurum habeant probationes insinuationes commissiones administrationum bonorum auditiones redditionum ratiocinii executorum testamentorum decedentium quorumcunque parochianorum suorum qui plura bona in diversis diœcesibus provinciæ Cantuariensis dum vixerint habuerant pro bonis illis quæ iidem decedentes in civitate vel diœcesi Lincolniensi tempore mortis suæ habuerunt necnon expeditiones earum ac cognitiones causarum prædictas quæ occasione bonorum hujusmodi inter partes quascunque quatenus ad forum ecclesiasticum pertinent in Lincolniensi diœcesi suscitari contingent. Reservata dicto domino Archiepiscopo et suis successoribus post redditiones calculationes sive expeditiones alias ratiocinii administrationum executorum hujusmodi testamentorum, summa et ultima inspectione hujusmodi ac ab administratione executorum absolutione finali ratiociniorum calculationum et expeditionum si eas ut metropolitanus ea occasione quod decedentes prædicti obtinuerunt in diversis diœcesibus suæ provinciæ plura bona inspicere voluerit. Ita tamen quod idem dominus Archiepiscopus et successores sui Archiepiscopi ipsas redditiones calculationes et expeditiones per prædictum episcopum factas absque aliquali calumnia et sine difficultate approbare teneantur. Renunciarunt insuper

partes prædictæ appellationibus hinc inde occasione prædicta interpositio. Omnibusque prosecutionibus earum ac juris, processibus pendentibus sibi competentibus hinc vel inde. In quorum testimonium sigilla dictorum patrum præsentibus literis perviam indenturæ confectis hinc inde mutuo sunt appensa. Actum et datum quoad nos Walterum Archiepiscopum prædictum 6 Id. Januarii, anno domini, 1319, in prioratu Huntingdoni.

No. II.

*Copy of the Statement of the Suffragan Bishops of the Province of Canterbury, in the Controversy moved in Convocation, respecting the Probate of Wills.**

Sequitur breve compendium illorum, quæ suffraganei Cant. provinciæ pro bono pacis inter dominum Archiepiscopum Cant. et ipsos quoad jurisdictionis exercitium, et præcipue circa testamentorum in diœcesibus suffraganeorum decedentium examinatione, et approbatione, taliumque decedentium ultimarum voluntatum executionem, quæ omnia de consuetudine regni Angliæ jurisdictionis ecclesiasticæ sunt, et ad forum spectant ecclesiasticum, habendum summo studio excogitarunt; et in quibus iidem suffraganei cum domino Archiepiscopo, sedandæ litis causa, tractatum habuerunt, quæque sibi, licet non sine juris eorum et ecclesiarum suarum aliquali diminutione, fovendæ tamen sanctæ pacis prætextu obtulerunt.

Imprimis ponunt suffraganei pro fundamento, et, si necesse fuerit, probare volunt, quod de consuetudine regni Angliæ testamentorum approbatio, sive insinuatio est juris-

* 3 Wilkins's Concilia, 653; see also amongst the Records at Lambeth, Lib. 582, p. 22.

dictionis ecclesiasticæ, et ad forum ecclesiasticum spectat, quodque constitutionibus tam provinciæ Cantuariensis quam Octoboni, olim in dicto regno Angliæ sedis apostolicæ legati, ac de consuetudine predict. testamentorum hujusmodi approbatio, in singulisque diœcesibus dictæ provinciæ ad viam intestator. decedentium, bonorum administratio, et ipsius commissio, cæteraque voluntatum ultimarum hujusmodi decedentium executores concernent. ad locorum ordinarios spectant et pertinent, prout ex inspectione constitutionum prædictarum dictæque consuetudinis notorietate liquet evidenter; ex quibus sequitur dictum dominum Archiepiscopum prætendent jus approbandi testamenta subdit. suffraganeorum suorum cæteraque præmiss. casu quo dictorum suffraganeorum subditi sic, ut præmittitur, decedentes, mortis suæ tempore bona in diversis diœc. provinciæ Cant. habuerint, sibi ex quadam prærogativa sive quodam privilegio competere suam non posse in hac parte intentionem, nisi aliquo jure speciali fundare. Eapropter eidem Archiepiscopo supplicarunt dicti suffraganei, quatenus ipse declarare dignaretur eisdem hujusmodi prærogativæ, si quæ talis esset, naturam atque certitudinem, an viz. prætendat hujusmodi subdit. suffraganeorum in eorum diœc. decedentium, ac bona tempore suæ mortis in diversis diœcesibus ejusdem provinciæ pro relinquentium testamentorum approbatione, ac cætera præmissa ad se pertinere, casu quod decedentes ipsi tempore prædicto bona in diversis hujusmodi diœcesibus obtineant notabilia, et non aliter? Et si sic, tunc ut declararet, quid, sive quantum ejus opinione bonorum notabilium appellatione comprehendatur, seu ad quam summam extendere debeat ad effectum, ut notabilia dici possint; et si prætenderet, se præfatam habere prærogativam etiam quoad bona, quæ non possunt dici notabilia, tunc instarunt ipsi suffraganei, licet certum fuerit ipsum hoc non posse justificare, ut per eundem Archiepiscopum dilucidaretur, ultra quam bonorum summam, quantitatem sive quem valorem, hujusmodi prærogativæ locus esset, et a qua summa, seu bonorum quantitate, vel supra quam summam sive quantitatem prærogativa prædicta sortiri cupit effectum. Ipsis tum petitionibus Archiepiscopus annuere renuebat, cupiens hujus-

modi prærogativam prætensam sub dubio remanere, ut ad libitum ipsius suorum jura suffraganeorum usurpare posset, in tantum ut sæpenumero nunc vi, nunc clam hujusmodi suffraganeorum subditorum, ut præfertur, decedentium, ac bona in diversis diœcesibus usque ad minimam quantitatem, interdum vero tantum in diœcesi, qua decedunt, habentium testamenta duntaxat usurpand. insinuat, bonorumque administrationes committit, quod nullus unquam prædecessorum suorum usurpavit; ac cum aliquando affirmaret se contentari velle subdit. hujusmodi testamentorum approbat. ac cætera præmissa sibi non competere, nisi quando bona in altera diœc. existent. ad summam sive quantitatem quinque librarum sterling. se extendant, interpellatus, quo jure quave ratione hoc ad se pertinere vendicet, seu qua ratione magis de hac quinque librarum summa, quam alia se fundet, subticuit, nullam prætensam juris sui in hac parte tamen saltem rationabilem ostendere dignabatur.

Item cum dicti Archiepiscopi officiales et ministri sæpius fingant decendentes bona in diversis diœc. habuisse cum non habuerunt, et eo sub colore testamenta sic decedentium per fas et nefas de facto approbant, ubi jus approbandi nullum habent, sed ad aliquem de suffraganeis aut eorum archidiaconis spectare deberet, sicuti ex præmissis dilucide apparet; humiliter petierunt iidem suffraganei, ut invenirentur media, per quæ fraudibus hujusmodi via præcluderetur; ex quo priusquam ipse Archiepiscopus ad hujusmodi testamentorum insinuationem procederet, vocat. de jure vocand. certitudine constare possit, utrum ipsi decedentes aliqua in diversis diœcesibus ac quanta bona tempore mortis habuerunt. Quibus petitionibus licet justissimis præfatus Archiepiscopus nullum saltem rationabile dare voluit responsum.

Item, cum tam de jure et consuetudine regni Angliæ, quam de constitutionibus prædictis, jus personarum quarumlibet in diœcesibus suffraganeorum ab intestato decedentium bona administrandi, administrationemque bonorum ipsorum committendi ad eosdem suffraganeos locorum ordinarios notorie pertineat, novumque sit ac (attenta consuetudine prædicta) juri contrarium, ut Archiepiscopus Cantuariensis bonorum

hujusmodi administrationi seu administrationis ipsius commissioni se immisceret; humiliter ex parte episcoporum extitit supplicatum, ut id ni archiepiscopus de hoc inposterum minime impediret; sed suffraganeos suos uti jure suo in hac parte sineret ac permitteret; sed voluntati suæ inhærendo respondit, se prærogativa sua in intestat. uti in testatis uti velle, cum revera nullam talem habeat prærogativam, de qua rationabiliter decerni posset. Insuper ubi decedens aliquis in una diœcesi terras habet tempore mortis, aut hæreditamenta in alia, nititur Archiepiscopus in hoc casu decedentium hujusmodi testamentorum approbationem usurpare, licet de jure et consuetudine dicti regni prohibeatur ecclesiasticus judex sub magnis pœnis de terris et hæreditamentis hujusmodi, vel de voluntatibus ultimis ea concernen. intromittere, hocque sit novum et inauditum, cum nullus unquam Archiepiscoporum Cant., ipso moderno duntaxat excepto, testamentorum approbationem in hoc casu usurpare solitus sit; simili modo usurpat quando moriens in sua diœcesi debitores habet in alia, quanquam hujusmodi debitum nullo certo loco circumscribi aut contineri diu valeat, hocque omnino novum fuerit et inusitatum. Emanavit quoque nunc dierum ab hujusmodi suæ prærogativa prætensæ curia inusitato stilo rescriptum sub hoc viz. tenore. Probatum et approbatum fuit præsens testamentum A. B. habentis, dum vixit, ac mortis suæ tempore bona mobilia vel immobilia, spiritualia vel temporalia, jura seu debit. in diversis diœcesibus aut jurisdictionibus peculiaribus provinciæ Cantuariensis, &c. Quo stilo nunquam usus est aliquis Archiepiscopus Cantuariensis ante, dum nec quisquam Archiepiscopus Cantuariensis ante tempora domini Johannis Morton usurpavit approbationem testamentorum subdit. suffraganeorum; nisi tunc duntaxat, cum subditus hujusmodi decedens, mortis suæ tempore bona reliquerit notabilia in alia diœcesi extra illam, in qua obierit; licet et hoc tamen, quo jure ad se id pertinere prætendebat, suffraganeis penitus sit ignotum. Nec satis mirari possunt ipsi suffraganei, unde dicta prærogativa duceret originem, nisi duntaxat per usurpationem violentam aut clandestinam; cum liqueat evidenter Octoboni olim in regno Angliæ sedis

apostolicæ legati, temporibus hujusmodi prærogativam prorsus incognitam fuisse. Nam tempore dicti legati inter episcopos Cantuariensis provinciæ controversia fuit in casu, quo clericus beneficiatius, habens beneficia in diversis diœcesibus, decederet in earum una, ad quem episcoporum spectaret ipsius clerici testamenti approbatio, ad ipsumque legatum ejusdem dubii processit decisio, quod viz. ad episcopum spectaret, in cujus diœcesi talis obierit beneficiatus, prout in constitutione dicti legati incipiente "libertatem" clare liquere poterit. Intuenti præterea de tali prærogativa tempore bonæ memoriæ domini Joannis Stratford, olim Archiepiscopi Cantuariensis inauditum erat, cum id ni dominus Johannes in quodam concilio provinciali Cant. cui præerat, tanquam caput de consensu episcoporum et aliorum prælatorum clerique dictæ provinciæ declaraverit, approbationem et insinuationem testamentorum bonorumque distributionem et commissionem tam clericorum quam laicorum infra dictam provinciam Cant. decedentium, ad ordinarios locorum; in quibus obierunt, pertinere. Post quod quidem concilium nonnulla alia secuta sunt, quibus semper præsidebat Archiepiscopus Cantuariensis pro tempore existens, qui poterat de termino in terminum hujusmodi concilium convocare. Nec de retractione seu revocatione dictæ constitutionis qua præmissa ad locorum ordinarios spectare declarantur, hujusque tractavit aut egit quisquam Archiepiscopus, neque de jure aut de possessione episcoporum in ea parte quæstionem movere attemptavit, aut ordinationem aliquam, constitutionemve novam super hujusmodi testamentorum approbationibus, ac bonorum administrationis commissionibus in aliquo conciliorum hujusmodi fieri procuravit super constitutionem prædictam, quam dominus Johannes Stratford, ipsorum Archiepiscoporum unus, edidit et promulgavit, alii ejus successores non revocando scienter prudenterque approbarunt, ac episcopos in possessionem præmissorum, juxta constitutionis prædictæ tenorem perseverare sustinuerunt, usque ad tempus domini Johannis Morton, qui nuper, viz. citra XIV. annos ult. præteritos, ecclesiæ incumbens obiit, qui crebris suspensionibus, et excommunicationibus censurarumque fulminationibus, quas in personas sibi non parentes rigorose de facto ferebat, suffra-

ganeorum suorum subditos ita terrebat, quod ipsi censurarum hujusmodi metu ad curiam hujusmodi Archiepiscopi, quam idem dominus Johannes Morton, tunc Cardinalis et Cancellarius Angliæ, primus omnium prærogativæ curiam vocari fecit pro testamentorum approbationibus, ac aliis præmissis, accedere sunt coacti cum maximo suffraganeorum ipsorum et eorum Archidiaconorum tumultu; qui cum dictos eorum subditos ad curias suas in casibus præmissis, qui ad suam jurisdictionem pertinere dignoscuntur, vocarent, ac eorum juri et possessioni in hac parte inniterentur, idem Archiepiscopus se judicem in hac causa faciens, ac jus sibi dicens, suis crebris inhibitionibus injuriosis eosdem episcopos jurisdictionem suam exercere contra justitiam impedivit; quandoque vero suffraganeis ipsis, et eorum Archidiaconis id minime scientibus, sed prorsus ignorantibus, eorum jurisdictionem in casibus prædictis usurpavit adeo vehementer, ut bonæ memoriæ dominus Richardus Hill, tunc episcopus London. per supplicationem felicis recordationis domino Alexandro, tunc Romano Pontifici, contra dictum tunc Archiepiscopum factam super quibusdam juris et jurisdictionis ipsius London. episcopi et ecclesiæ suæ perturbationibus et molestationibus præmissis concernen. causam et causas prædictas citari obtinuerit: in qua lite dominus Cantuariensis Archiepiscopus, qui nunc est, licet antea curiæ Cantuariensis advocatus extiterat, præfato domino Richardo Hill, tunc Episcopo London. contra dictum dominum Johannem Morton, tunc Archiepiscopum, prætensam prærogativam fovebat et eidem consilium impendebat. Et si dictus dominus Johannes Morton Archiepiscopus aliquam prætensam, in præmissis tempore suo, vel Archiepiscopus modernus, qui dictas injurias continuavit, et longe majores adjecit, saltem facti possessionem adeptus fuerit, aut si illa proculdubio prætensa possessio fuit aut est violenta, aut clandestina, in tantum ut idem dominus Archiepiscopus Cantuariensis, qui ante Archiepiscopatus ipsius assecutionem curiæ Cantuariensis advocatus extiterat, advocatique officium in eadem per non modicum tempus exercuerat, dum stetit Archidiaconus Huntingdon. in ecclesia Lincoln. et postmodum in episcopum London. consecratus, et eidem ecclesiæ London. incumbens, dictam prærogativam prætensam cæteris

coepiscopis ecclesiæ Cant. suffraganeis, multo vehementius impugnare, eidemque adversari conabatur, et ad suscitandam litem per se et nomine suo, contra et adversus Archiepiscopum Cant. qui tunc erat, seu saltem contra dictum Archiepiscopi in eadem prætensa prærogativa tunc commissarium, pro certis gravaminibus jurisdictionis suæ, et ecclesiæ London. circa præmissa perturbationem et molestationem concernen. sibi per dictum tunc Archiepiscopum, seu ejus præfatum commissarium illat. et inferri comminat. dominum Johannem Yong, LL.D. cancellarium suum, adhuc superstitem, Romam misit, idemque dominus Johannes Yong, cancellarius, ad mandatum domini sui in hac parte complendum, suum ad sedem sanctam apostolicam iter arripuit; super idem dominus suus in brevi post ad Archiepiscopatum Cant. assumptus est. Et cum in cleri dictæ provinciæ Cant. convocatione nuper London exercita reformationis gravaminum prædict. et aliorum nonnullorum excessuum, in ipsa provincia pullulantium, fiendæ gratia, quatuor de gravioribus patrum sive prælatorum in ipso concilio congregatorum, cum uno archidiacono ad excessus hujusmodi perscrutandos, et sanctæ synodo detegendos, reverendi viz. patres Richardus, Norwicensis, et Johannes, Roffensis episcopi, prior ecclesiæ metropoliticæ Cant. et Johannes, ecclesiæ cathedr. S. Pauli London. decanus, inter alia reformatione digna, quæ, fama publica referente, eorum auribus insonuerunt, excessus quidam ipsius archiepiscopi suorumque officialium per eos in medium adducti, ac ipsi archipræsuli patribusque in eadem sancta synodo coadunatis, ut in statum debitum reducerentur charitative denunciati: retulerunt etenim ipsos in emittendo inhibitiones a curiis ipsius archiepiscopi nimium excedere cum suffraganeis et eorum officialibus, ac ministris administrand. justitiam inter subditos eorum in causis ad forum ecclesiasticum spectantibus, ac plures in causis peccati correctionum, se parentibus etiam ante aliqualem pœnitentiæ injunctionem aliumve processum per eos fact. citatione duntaxat excepta, præfatus archiepiscopus, et ipsius officiales, inhibitiones, etiam priusquam de veritate causæ appellationis aut querelæ cognoscere incipiant, dimittunt; per quas hujusmodi suffraganei a ministratione justitiæ peccatique correctione nequiter

impediuntur, ipsique circa suæ jurisdictionis exercitium perturbantur et molestantur. Denunciarunt insuper gravem excessum archiepiscopi suorumque officialium circa testamentorum approbationes, quas usurpat idem archiepiscopus contra constitutionem domini Johannis Stratford, quondam archiepiscopi Cant. de qua supra fit mentio; quæ quidem testamentorum approbationes juxta dictæ constitutionis tenorem ad suffraganeos pertinere deberent. Et quod idem archiepiscopus et officiales in dictis testamentorum approbationibus, et circa eas, necnon ipsius apparitores sive appretiatores, quos in singulis dioec. provinciæ, in aliqua tres, aut quatuor, et in quibusdam quinque, aut sex, vel plures contra juris dispositionem constituit, circa bonorum æstimationem seu appretiationem, et inventariorum confectionem, quæ non ad eos, sed ad defunctorum executores pertinere, neque per dictos apparitores, sed per ipsos executores, fieri deberent suffraganeorum subdit. contra dict. constitut. prohibitionem concussionibus et extortionibus immensis fatigand. perturbant et onerant, super quæ concussiones et extortiones consimiles fiunt per ejusdem archiepiscopi officiales, cum ecclesiæ cathedr. et earum dicec. tempore vacationis earundem per ipsos visitantur. Gravamina insuper sequentia suffraganeis per archiepiscopum, et officiales suos quotidie inferuntur, et fiunt:

Inprimis, in casibus cœptis coram inferioribus, statim ad alterius partis querelam, etiam nulla appellatione interposita, aut prætensa, nec ullo legitimæ devolutionis modo interveniente, dant citationes cum inhibitionibus, etc. sine causæ cognitione, et evocant causas ad curias suas, etsi præventus fuerit archiepiscopus ab inferiori ordinario.

2. Item, cum appellatur ab ordinario, immediate sive mediate, utputa archidiacono vel ejus officiali ad archiepiscopum, statim inhibent judici, a quo etiam, nulla causæ cognitione præcedente, quanquam frivola, fit appellatio.

3. Item interdum suffraganeorum subditos in causis animæ correctionem concernentibus, nulla appellatione vel querela præcedente, et in casu a jure communi non concesso, ad suum examen faciunt evocari, ex eorum officio prætenso mero.

4. Item, subditos suffraganeorum per eosdem suffraganeos,

aut eorum officiales censuris eclesiasticis legitime ligatos sine difficultate absolvunt, licet remitti deberent absolvendi.

5. Item, si inferiores ordinarii, per inhibitiones hujusmodi temerarias de facto inhibiti, cognoscant ulterius in causis prædictis, statim citantur ad respondendum articulis sive interrogatoriis ipsius archiepiscopi, et suæ jurisdictionis contemptum concernent. et personaliter, si non sint episcopi.

6. Item, cum tractatur de jure approbandi testamenta, sive de jurisdictione inter archiepiscopum et suffraganeos, citantur nihilominus episcopi, et eorum officiales, ad curam archiepiscopi, ex officio etiam mero, ubi archiepiscopus est judex, et pars in causis propriis.

7. Item in omnibus causis tam appellationum quam querelæ dictus archiepiscopus emittit citationes sine expressione loci certi, sub hujusmodi forma : Ad comparendum coram nobis aut nostro in hac parte audien. causarum et negotiorum auditore, sive commissario tali die, ubicunque nos, aut auditorem, seu commissarium nostrum hujusmodi tunc sedere contigerit.

8. Item, cum quis a suffraganeo, seu alio inferiori judice ad sedem apostolicam appellat, etiam frustratur, statim dictus archiepiscopus, vel ejus official. sine ulla causæ cognitione, sive illa appellatio sit admissa apud eandam sedem, sive non, dat inhibitiones contra judicem a quo in negotio tuitorio.

9. Item eodem modo per modum tuitionis prætensæ dat inhibitiones contra judicem specialiter delegatum a sede apostolica, sive contra executores apostolicæ sedis.

10. Item dictus dominus archiepiscopus, et officiales sui subditos suffraganeorum sæpius, et quasi continue in casibus a jure non permissis ad comparendum coram se, et ultra septem et octo dietas evocari faciunt,in ipsos, quasi non paruerint, ubi parere minime tenentur, excommunicationis, vel suspensionis ferunt sententias, ac eos indebite fatigant et molestant.

11. Item ratione juramenti advocatorum et procuratorum dictæ curiæ sæpenumero contingit impedimentum devolutionis plurium causarum ad sedem apostolicam, cum iidem advocat et procuratores ubicunque, cum tangit ipsum archiepiscopum,

aut ejus prærogativam prætensam, appellare non audeant, nec in devolutionem hujusmodi causarum consentire.

12. Item hii, qui advocati aut procuratoris officium in dicta curia aliquando exercuerunt, licet hujusmodi officium deposuerint, aut prorsus dimiserint sive reliquerint, ab eadam curia per dictum archiepiscopum expulsi fuerint, si cum postea patrocinium alicui ex suffraganeis præstiterint in aliqua causa, quæ dictam prærogativam prætensam tangere videatur, prætendit archiepiscopus eos in perjurium incidere, et eo sub prætextu eosdem sub hujusmodi prætenso perjurio quandoque coram se, et officialibus suis, quandoque vero per literas apostolicas in causam trahit, ipsosque suffraganeos consiliaros habere non patitur.

13. Item præter et ultra extortiones, concussiones, et deprædationes officialium et apparitorum dicti archiepiscopi, de quibus supra fit mentio, sæpe contingit, quod defunctorum executores, pro testamentorum approbationibus, ab ultimis provinciæ finibus redeundo, diu ibi standо, et impensas graves et quasi importabiles compulsi faciend. defunctorum substantias, per quas supremæ eorum voluntates debitum sortirentur effectum, et quæ in pios usus pro animarum eorum quiete converterentur, consumunt et exinaniunt, in tantaque distantia morantur iidem executores, ut per archiepiscopum, aut ejus officiales, pro decedentium hujusmodi ultimarum voluntatum executione nulla fiat, aut vix fieri valeat provisio, sed ex aliqua causarum præmissarum hujusmodi voluntates debito frustrantur effectu, cum aut a suffraganeis idem archiepiscopus pro dict. et aliorum excessuum reformatione, nedum in sacra synodo, sed illa dimissa non tantum semel sed pluries humiliter interpellatus, et eam prorsus neglexisset, ipsum ad aliquam compositionem rationabilem inter eos fiend. cum pro concordia communi prælatorum dictæ provinciæ, scandaloque in hac parte vitando, tum pro subditorum quiete movere cœperunt, seque consentire velle dixerunt, ut de communi auctoritate et consensu dicti archiepiscopi, et suffraganeorum ac archidiaconorum communi in quolibet archidiaconatu ipsius provinciæ deputaretur unus commissarius juratus, qui

testamenta quarumcunque personarum infra ipsum archidiaconatum decedentium, et bona in diversis diœcesibus obtinentium approbaret, ac de proven. eorundem dicto archiepiscopo, et suffraganeis, et archidiaconis interesse, ut præfertur, habentibus, reddita ratione responderet juxta et secundum tales quotas, sive portiones inter eos dividendas, quæ et rationabiles fore viderentur, et de quibus rationabiliter convenire possent, vel hoc si non placeat, quod tunc singuli suffraganeorum et archidiaconorum prædict. testamenta quarumlibet personarum infra suas diœc et archidiaconat. morientium, et bona in diversis diœces. habentium approbarent, ac aliquam annuam pensionem, de qua rationabiliter concordare valerent, archiepiscopo solvere tenerentur, quarum oblationum utramque dictus archiepiscopus refutavit. Suffraganei vero perspicientes archiepiscopum dict. motionibus licet multum rationabilibus acquiescere noluisse, malentesque juri eorum aliquid detrahi, quam litium aggredi longa certamina, novis paucis persuasionibus eundem archiepiscopum adierunt, offerentes ei id, quod nec ipse, nec unquam prædecessorum suorum quisquam aliquo jure sibi vendicare potuit, quod videlicet idem archiepiscopus haberet testamentorum approbationem ipsius suffraganeorum, subditorum quorumcunque in eorum diœc. decendentium, ac bona mobilia aut debit. saltem certa et sperata debitoribus solvend. extendent. usque ad summam, quantitatem, sive valorem quinque librarum sterling. inclusive in alia diœc. seu aliis diœc. extra illam, in qua obierunt tempore suæ mortis habentium : ita ut archiepiscopus tertiam partem commodi exinde provenientem episcopo, in cujus diœc. talis decederet, solvere teneretur, suffraganeique et archidiaconi prædicti, quoad omnia alia testamenta jurisdictionem suam libere exercerent; quibus archiepiscopus assentiri renuebat, suadens illis ad consentiendum quod idem archiepiscopus omnium proventuum de approbationibus testamentorum per totam provinciam Cant. contingent. reciperet, et haberet duas partes, suffraganeique et eorum archidiac. duntaxat tertiam. Cui suasioni, quia illis enormiter damnosa, eorumque jus quasi in totum absorbere videbatur, inclinare non merito recusarunt: cum iidem suffraganei, et eorum ministri, nullam prorsus habeant noti-

tiam, neque sciant, quo jure, quo titulo dictus archiepiscopus prærogativam aliquam hujusmodi sibi vendicaret, prout eorum singuli, si congruum videatur, quodcunque juramentum facere sunt parati, se quadragesima aut quinquagesima gravium ac probatissimorum prælatorum ejusdem provinciæ manu, qui juri Cant. ecclesiæ in præmissis aut quibusvis aliis derogare nunquam intenderunt, purgari; atque firmiter credere omnia et singula in eorum querela sanctissimo domino nostro papæ in hac parte facta, et in ejus sacro auditorio pendente, declarata et expressa vera esse; jurique ac sanæ conscientiæ et rationi consona. Pro quorum omnium et singulorum reformatione penes præfatum archiepiscopum iidem suffraganei plures fecerunt instantias, semper tamen absque spe cujusvis reformationis ab eo redierunt; cumque se omni remedio penitus saltem in partibus destitutos, seque præmissa absque juramentorum suorum, quibus ad ecclesiarum suarum jura defendenda sunt astricti, offensione amplius dissimulare non posse, ad sedem sanctam apostolicam, unicum oppressorum præsidium confugient. pro se suisque ministris, ac adhærentibus sanctissimo domino nostro papæ de præmissis querelam justissimam interposuerunt, ac super eisdem causam et causas in sacro auditorio prædict. rite committi obtinuerunt; quibus non obstantibus, si per quosvis sanctæ pacis zelatores aliqua via sedandæ litis in ea parte rationabilis excogitari valeat, ad hanc mutandam dicti suffraganei, et eorum archidiaconi prædict. semper erunt paratissimi, nec bonorum virorum in hac parte subire judicium recusabunt. Et præterea advertendum, quod cum reverendissimus pater archiepiscopus modernus fuerit London. episcopus, ille passim approbavit testamenta quorumcunque decedentium suæ dicec. habentium bona in diversis dicec. Cantuar. provinciæ, etiam ad centum libr. summam, et aliquod magis, et aliquod minus, ut evidenter liquet ex registris London. ecclesiæ suo tempore factis.

Papæ Rom. Julii II. 10. Anno Christi, 1512.
Archiep. Cant. Guliel. Warham, 10. Reg. Angliæ, Hen. VIII. 4.

No. III.

Statement of the Conclusion of the Controversy between the Archbishop of Canterbury and his Suffragan Bishops, in 1513, *extracted from the Antiquitates Britannicæ Ecclesiæ by Archbishop Parker, p.* 307.

Sequenti autem anno exorta est gravis inter Archiepiscopum ac ejus suffraganeos de prærogativæ Cant. jure altercatio. Ejus Romæ instituendæ author fuit, Richardus Fox, Wintoniensis Episcopus, qui cum opibus & authoritate atque gratia cum Rege summa valeret, tantæ potentiæ animi magnitudinem adjungens ferre non potuit Archiepiscopi prærogativam. Itaque cum, antequam de ea re lis ulla moveretur, inter se primo communicarent, suamque prærogativam & potentiam trecentis amplius annis longæva consuetudine confirmatam Archiepiscopus ostenderet, nec se laturum ut Wintoniensis Episcopi pertinacia Ecclesiæ Cant. jura violarentur, fervidius affirmaret, Wintoniensis incensus fertur respondisse, quamvis Archiepiscopus in altiori solio sedisset, se tamen in pinguiori collocatum. Et ab ea contumelia statim transit ad deferendam Papæ contra Archchiepiscopum querelam. Wintoniensi Episcopo, Londinensis, Lincolniensis, & Exoniensis Regii (ut idem Rex postea affirmavit) consiliarii tanquam duci adhæserunt. Instituta autem litis capita fuerunt, quod cum (ut sæpe antea diximus) si quis de vita decedens bona notabilia in diversis diocæsibus possideat, ejus testamentum ab Archiepiscopo insinuaretur, aut si intestatus decesserit, bonorum suorum administratio ab eodem peteretur: primò ne hujusmodi bonorum appellatione prædiorum atque proventuum hœreditates, nec debita nisi sperata censeantur. Deinde nisi decedentium bona quæ quis extra eam diocæsin possidet in qua moritur, summam decem librarum attingant notabilia non dicantur, nec Archiepiscopali prærogativæ locus fiat. Tum ut bonorum æstimatores ab Archiepiscopo in suffra-

ganeorum diocæsibus non constituantur, sed executorum aut administrantium juramentis de bonorum æstimatione ac valore fides habeatur. Postremò ne peculiares jurisdictiones diversæ instar diocæsium diversarum reputentur. Papa hanc litem quam sibi lucrosam fore putabat avidè suscepit, & suffraganeis contra metropolitanum litigaturis decrevit edictum quo Archiepiscopum in jus Romam vocarent. Rĭchardus Wintoniensis cum hoc edictum accepisset, virum generosum ac solertem Willihelmum Paullet nuper summum Angliæ thesaurarium prædiorum suorum Episcopalium Seneschallum accersivit, eique in mandatis dedit ut eo edicto Archiepiscopum citaret. Is mandatum peregit. Citatus itaque Archiepiscopus & acris controversia Romæ de sua prærogativa consectata est. Cumque causa multis dilationibus procrastinaretur, Wintoniensis Episcopus & Suffraganei procuraverunt à Papa, ut eis hanc à se causam ablegaret, & Heŭrici Octavi Regis arbitrio referret. Is datis arbitris qui de lite cognoscerent, tandem ad Archiepiscopum scripsit. Et sibi, & regno Angliæ magnam infamiam partam quod si sui Regni Episcopi de hujusmodi jurisdictionis controversia Romæ, ubi omnium penè gentium nuncii atque legati convenirent, tanta inter se acerbitate contenderent. Proinde statuere se ne Romæ deinceps litigarent, tum ut si decedentium bona minoris quàm decem libris æstimentur, ut ab Archiepiscopali prærogativa non disponatur, præterea ne prædio, proventus & bona immobilia, quæ jure Regni legari atque sub testamenti factione cadere non possunt, ad prærogativam suam exercendam præstarent authoritatem.

Ad extremum ut neque ab Archiepiscopo neque ab episcopis ulterius constituantur æstimandis defunctorum bonis judices, nisi ab executoribus aut administratoribus requirantur. Quod suum arbitrium Rex triennio proximo observari præcepit, eo verò transacto si quæ litigantium pars se gravari sentiat, jure contra alteram experiri eodem decreto permisit. At vero Archiepiscopus rescripsit. Et si arbitrio ac decreto Regio obsequi atque parere paratus sit, salva tamen sua in Regem observantia, existimare se tam bona immobilia quam cætera, et si summam quadraginta solidorum Anglicanorum

non excedant, cætera, si tamen extra eam diocæsin & jurisdictionem, in qua defunctus moriatur, suam prærogativam fundare. Cujus rei longævam ac probatam consuetudinem ex veteribus & antiquissimis Cantuariensium Archiepiscoporum monumentis produxit. De apparitoribus item bonorumque atque rerum hæreditariarum æstimatoribus si ab Archiepiscopo et Episcopis non designentur, verendum esse ne si æstimandi potestas solis executoribus & administratoribus committatur, ex defunctorum bonis vilius æstimatis atque pensis, executorumque atque administratorum fraude non modo Archiepiscopo & suis suffraganeis, verum etiam quod multo gravius est, ipsis defunctorum creditoribus, sæpe etiam illorum liberis cum mortuis parentibus in tutela atque curatione hujusmodi executorum aut administrantium fuerint injuria summa fiat. Quæ vitari nulla ratione commodius possit, quam si bona ab Archiep. vel Episcopis eorumve commissariis æqua lance æstimata administranda committantur. Tandem Archiepisc. ut iniret cum suis suffraganeis concordiam, quod facere boni viri solent, cum agere summo jure potuisset, de suo jure multum remisit & suffraganeis concessit.

Namque pollicitus est in aliis defunctorum bonis, quàm quæ Anglicano veteri nomine Catalla dicerentur, prærogativam nullam vendicaturum, si modò Catallorum appellatione ea bona censerentur de quibus defunctus testari poterat. Tum de apparitoribus & æstimatoribus ut in bonis æstimandis & feudis exigendis sint deinceps moderatiores æquius statuendum. Præterea executorum atque administratorum juramentis de bonorum æstimatione fidem habiturum, si contrarii probatio elici ac investigari non possit. Summam etiam decem librarum ad suam exercendam prærogativam extra eam diocæsin in qua defunctus moritur, satis æquam declaravit. Postremo etsi in diversis peculiaribus parochiis defunctorum bona ad eam summam divisa sint, nisi tamen, ea bona in peculiaribus parochiis quæ in diversis suæ provinciæ diocæsibus Cantuariensi Ecclesiæ reservantur sita sint, interpositurum non esse suam prærogativam. Atque hæc inter Can-

tuariensem Archiepiscopum ac provinciæ suæ suffraganeos toties excitata de prærogativa controversia hac æquabili atque temperata Warhami moderatione in perpetuum tandem sopita est.

No. IV.

Canons relating to the Ecclesiastical Courts belonging to the Archbishop's Jurisdiction.

XCII.

NONE TO BE CITED INTO DIVERS COURTS FOR PROBATE OF THE SAME WILL.

FORASMUCH as many heretofore have been by apparitors, both of inferior courts and of the courts of the archbishop's prerogative, much distracted and diversely called and summoned for probate of wills, or to take administrations of the goods of persons dying intestate, and are thereby vexed and grieved with many causeless and unnecessary troubles, molestations, and expenses: we constitute and appoint, that all chancellors, commissaries, or officials, or any other exercising ecclesiastical jurisdiction whatsoever, shall, at the first, charge, with an oath, all persons called, or voluntarily appearing before them, for the probate of any will, or the administration of any goods, whether they know, or (moved by any special inducement) do firmly believe, that the party deceased (whose testament or goods depend now in question) had, at the time of his or her death, any goods or good debts in any other diocese or dioceses, or peculiar jurisdiction, within that province than in that wherein the said party died, amounting to the value of five pounds; and if the said persons, cited or voluntarily appearing before, shall, upon his oath, affirm, that he knoweth, or (as aforesaid) firmly believeth, that the said party aforesaid, had goods or good debts, in any other diocese or dioceses, or peculiar jurisdiction, within the said province,

to the value aforesaid, and particularly specify and declare the same then shall he presently dismiss him, not presuming to intermeddle with the probate of the said will, or to grant administrations of the goods of the party so dying intestate; neither shall he require nor exact any other charges of the said parties, more than such only as are due for the citation and other process, had and used against the said parties, upon their further contumacy, but shall openly and plainly declare and profess, that the said cause belongeth to the prerogative of the Archbishop of that province, willing and admonishing the party to prove the said will, or require administration of the said goods in the Court of the said Prerogative, and to exhibit before him the said judge the probate or administration, under the seal of the prerogative, within forty days next following: and if any chancellor, commissary, official, or other exercising ecclesiastical jurisdiction whatsoever, or any other register, shall offend herein, let him be, *ipso facto*, suspended from the execution of his office, not to be absolved or released, until he have restored to the party all expenses by him laid out contrary to the tenor of the premises, and every such probate of any testament or administration of goods so granted, shall be held void and frustrate to all effects of the law whatsoever. Furthermore, we charge and enjoin that the register of every superior judge do (without all difficulty or delay) certify and inform the apparitor of the Prerogative Court, repairing unto him once a month and no oftener, what executors or administrators have been, by his said judge for the incompetency of his own jurisdiction, dismissed to the said Prerogative Court within the month next before, under pain of a month's suspension from the exercise of his office for every default therein. Provided that this Canon, or any thing therein contained, be not prejudicial to any composition between the Archbishop and any Bishop or other ordinary, nor to any inferior judge that shall grant any probate of testament or administration of goods to any party that shall voluntarily desire it, but out of the said inferior court and also out of the Prerogative. Provided, likewise, that if any man die, *in*

itinere, the goods that he hath about him at that present, shall not cause his testament or administration to be liable to the Prerogative Court.

XCIII.

THE RATE OF BONA NOTABILIA LIABLE TO THE PREROGATIVE COURT.

Furthermore, we decree and ordain that no judge of the Archbishop's Prerogative shall henceforward cite, or cause to be cited, *ex officio*, any person whatsoever to any of the aforesaid intents, unless he have knowledge that the party deceased was, at the time of his death, possessed of goods and chattels in some other diocese, or dioceses, or peculiar jurisdiction within that province, than in that wherein he died, amounting to the value of five pounds, at the least; decreeing and declaring, that whoso hath not goods in divers dioceses to the said sum or value, shall not be accounted to have *bona notabilia*. Always provided that this clause here, and in the former constitution mentioned, shall not prejudice those dioceses where, by composition or custom, *bona notabilia*, are rated at a greater sum. And if any judge of the Prerogative Court, or any his surrogate, or his register, or apparitor shall cite, or cause any person to be cited, into his Court, contrary to the tenor of the premises, he shall restore to the party, so cited, all his costs and charges; and the acts and proceedings in that behalf shall be held void and frustrate. Which expenses, if the said judge, or register, or apparitor, shall refuse accordingly to pay, he shall be suspended from the exercise of his office until he yield to the performance thereof.

No. V.

GRANT OF JURISDICTION *to the Dean and Chapter and Prebendaries of Lincoln, about the Year* 1160, *with the Bishop's Mandate, to the Archdeacon, to abstain from exercising Jurisdiction in the Prebends.*

Robertus Dei gratia Lincolniensis Episcopus omnibus fidelibus Dei salutem. Noverit Universitas vestra nos remisisse omnibus prebendis Lincolniensis ecclesiæ in perpetuum omnia jura episcopalia et omnes exactiones. Et volumus quod omnes Canonici Lincolniensis perpetuam in præbendis suis et omnibus possessionibus quæ ad præbendas pertinent libertatem habeant. Ita quod de cetero nullo liceat Archidiacono vel Archidiaconorum officiali de præbendis vel de ecclesiis quæ ad communionem Lincolniensis ecclesiæ pertinent aliquid exigere, vel homines eorum in placitum ponere; sed eandem omnino habeant libertatem, quam habent Canonici Salisbiriensis ecclesiæ in suis. Præfatam vero libertatem Subdecanatium et ecclesiæ Kertuniæ quæ ad subdecanatum pertinere dignoscitur necnon et ecclesiæ omnium sanctorum in ballio quæ de cancellaria est nostræ ecclesiæ perpetuo concedimus, et præsentis sigilli nostri attestatione communimus et corroboramus. Testibus Martino thesaurario, Radulpho subdecano, Galfrido capellano domini Regis, Willielmo de Bugden capellano, Fulco de Chaisun canonico, magistro Radulpho medico, Laurentio Giberto de Seperlingham, Willielmo Clement priore de Hellesham, Thoma canonico de Grimesby.

Robertus Dei gratia Lincolniensis episcopus omnibus Archidiaconis per episcopatum Lincolniensem constitutis, salutem.

Noverit universitas vestra nos imperpetuum absolvisse omnes Canonicos Lincolniensis ecclesiæ a subjectione quam de præbendis eorum et earum pertinenciis tam in præbendis quam hominibus, et omnibus ad eas pertinentibus exigere quondam consuevistis. Testibus Martino Thesaurario, Galfrido capellano Regis, magistro Radulpho, et magistro Henrico Fulco et Willielmo capellano.

APPENDIX II.

AN ACCOUNT

OF

THE SEVERAL JURISDICTIONS

OF

THE DIOCESE OF LINCOLN:

WITH

DIRECTIONS WHERE WILLS ARE PROVED AND WHERE THE ORIGINALS ARE DEPOSITED.

The Diocese of Lincoln is divided into Six Archdeaconries, viz:—

Archdeaconry of Lincoln,	in the County of Lincoln.
Archdeaconry of Stow,	
Archdeaconry of Leicester, - -	in the County of Leicester.
Archdeaconry of Buckingham, -	in the County of Buckingham.
Archdeaconry of Huntingdon, -	in the County of Huntingdon.
——————————— - -	in the County of Hertford.
Archdeaconry of Bedford, - -	in the County of Bedford.

N.B. There are Eight Peculiar Jurisdictions in the Counties of Oxford, Northampton, and Rutland.

COURTS EMPOWERED TO GRANT PROBATES OF WILLS
IN THE COUNTY OF LINCOLN.

Styles of Courts.	EXTENT OF JURISDICTIONS.	Places where the Wills are Deposited.	Persons in whose Custody.
Consistory Court of the Lord Bishop of Lincoln.	Throughout the whole Diocese of Lincoln	In the Registry at Lincoln.	Robert Swan, Registrar.
Court of the Commissary of the Archdeaconry of Lincoln. Court of the Archdeacon of Lincoln.	The Archdeaconry of Lincoln extends over the Wapentakes or Hundreds of Aveland, Aswardhurn (except the Parishes of Scredington, Kelby and Culverthorpe), Beltisloe, (except the Parish of Skillington), Bradley Haverstoe, Boothby Graffoe, (except the Parishes of Thurlby and Wellingore) Bolingbroke, (except the Parish of Asgarby), Calceworth, (except the Parish of Strubby), Candleshoe, (except the Parish of Dalby), Elloe, Flaxwell, (except the Parish of New Sleaford), Gartree, (except the Parish of Scamblesby), Hill, Horncastle, Kirton, Loveden, Langoe, Louthesk, (except the Parish of Louth), Ludborough, Ness, Skirbeck, Threo, Walshcroft, (except the Parishes of Binbrooke Saint Gabriel, and Holton le Moor), Wraggoe, except the Parishes of Hainton and Southray), Winnibriggs, (except the Parish of Heydour), and Yarborough, (except the Parishes of Caistor, Clixby, North Kelsey, Searby-cum-Owmby, and Melton Ross), the City of Lincoln, (except the Parishes of Saint Nicholas and Saint John), and the Parish of Saint Paul in the Bail of Lincoln, (and except the Peculiar of Kirkstead)	Same.	Same.
Court of the Commissary of the Archdeaconry of Stow. Court of the Archdeacon of Stow.	The Archdeaconry of Stow extends over the Wapentakes or Hundreds of Aslaco, (except the Parishes of Glentham and Bishop's Norton, with Atterby), Corringham, (except the Parishes of Corringham and Kirton in Lindsey), Lawress, (except the Parishes of Dunholme, Friesthorpe, Welton, North Carlton, and South Carlton), and Well, (except the Parish of Stow, with the Townships of Sturton, and Normanby by Stow), in the County of Lincoln . .	Same.	Same.

THE COUNTY OF LINCOLN CONTINUED.

Styles of Courts.	EXTENT OF JURISDICTION.	Places where the Wills are Deposited.	Persons in whose Custody.
Court of the Dean and Chapter of Lincoln.	The Parishes of Saint Margaret and St. Mary Magdalen, in the Close of Lincoln, Saint Nicholas and Saint John, in the City of Lincoln, Asgarby, Binbrooke, Saint Gabriel, South Carlton, North Carlton, Dunholme, Dalby, Frisethorpe, Glentham, Hainton, North Kelsey, Melton Ross, Strubby, Skillington, Scredington, Scamblesby, Searby, Thurlby, Welton, Wellingore, and the Hamlet of Southray, in the County of Lincoln	In the Registry of the Dean and Chapter.	Robert Swan Registrar.
Court of the Subdean of Lincoln in the peculiar of Kirton in Lindsey.	The Parish of Kirton in Lindsey	In the Registry of the Bishop and Dean and Chapter of Lincoln.	Same.
Court of the Prebendary of Bishop's Norton.	The Parish of Bishop's Norton, and Township of Atterby . . .	Same.	Same.
Court of the Prebendary of Corringham.	The Parish of Corringham.	Same.	Same.
Court of the Prebendary of New Sleaford or Lafford.	The Parish of New Sleaford	Same.	Same.
Court of the Prebendary of Stow in Lindsey.	The Parish of Stow in Lindsey, and Townships of Sturton and Normanby by Stow.	Same.	Same.
Court of the Prebendary of Louth.	The Parish of Louth	In the office of the Registrar at Lincoln.	John May Bromehead, Registrar.
Court of the Prebendary of Caistor.	The Parishes of Caistor and Clixby, and Township of Holton-le-Moor .	Same.	Same.
Court of the Prebendary of Heydour with Walton.	The Parish of Heydour, with the Townships of Kelby and Culverthorpe .	Same.	Same.
Court of the Lord of the Manor of Kirkstead.	Kirkstead, Mearbooth, Tattershall, Tattershall Thorpe, Kirkby-upon-Bane and Woodhall	Lord of the Manor of Kirkstead.	The Lord of the Manor.

COURTS EMPOWERED TO GRANT PROBATES OF WILLS

IN THE COUNTY OF LEICESTER.

Styles of Courts.	EXTENT OF JURISDICTION.	Places where the Wills are Deposited.	Persons in whose Custody.
Court of the Commissary of the Archdeaconry of Leicester. Court of the Archdeacon of Leicester.	The County of Leicester, excepting the Peculiar of Saint Margaret in Leicester, and the Peculiars of Evington, Rothley, Groby, and Old Dalby.	In the Registry in Leicester.	John Stockdale Hardy, Deputy Registrar of the Commissary's Court, & Registrar of the Archdeacon.
Court of the Prebendary of St. Margaret in Leicester.	The Parish of Saint Margaret, within the Town of Leicester, and the Chapelry of Knighton.	In the Office of the Registrar at Leicester.	Beaumont Burnaby, Registrar.
Court of the Lord of the Manor of Evington.	The Parish of Evington.	Same.	Same.
Court of the Lord of the manor of Rothley.	Rothley, Wykeham, Caudwell, Gaddesby, Keyham, Grimstone, Wartnaby, and Part of Somerby, South Croxton, Mountsorrel, Barsby Vill, and Saxelby.	Same.	John Stockdale Hardy, Registrar.
Court of the Lord of the manor of Groby in the county of Leicester.	The parish of Groby; the Parish of Glenfield, exclusive of its Chapelries of Kirby Muxsloe, and Braunston; the Township of Ansty, (a Chapelry to Thurcaston); the Parish of Ratby, inclusive of its Hamlets of Groby, Newtown Unthank, and Newtown Boscheston; the Parish of Newtown Linford, inclusive of Part of Charnwood Forest, with the New Chapel; the Park of Bradgate and Holgate Ward; the Parish of Swithland; the Township of Cropston, (a Chapelry to Thurcaston); the Township of Stanton-under-Barden, (a Chapelry to Thornton)	In the Office of the Registrar at Leicester.	Samuel Miles, Registrar.

COURTS EMPOWERED TO GRANT PROBATES OF WILLS

IN THE COUNTY OF BUCKINGHAM.

Styles of Courts.	EXTENT OF JURISDICTION.	Places where the Wills are Deposited	Persons in whose Custody.
Court of the Commissary of the Archdeaconry of Buckingham. Court of the Archdeacon of Buckingham.	Comprises the whole of the County of Buckingham, except the Peculiars of Aylesbury, Buckingham with its Hamlets, Bierton, Buckland, Quarrendon, Stoke Mandeville, Towersey, Halton, and Monks Risborough, and the Parishes of Winslow, Grandborough, Little Harwood, and Aston Abbotts, in the Archdeaconry of Saint Albans, and Diocese of London . . .	In the Office of the Deputy Registrar at Aylesbury.	Edward Prickett, Deputy Registrar.
Court of the Dean and Chapter of Lincoln in the peculiar of Aylesbury.	The Parish of Aylesbury.	Same.	Same.
Court of the Dean and Chapter of Lincoln in the peculiar of Buckingham.	The Parish of Buckingham, and the Hamlets of Bourton, Bourtonhold, Gawcott, Lethenborough, and Prebend-end.	Same.	Same.
Court of the Dean and Chapter of Lincoln in the peculiar of Bierton.	The Parishes of Bierton, Buckland, Stoke Mandeville, and Quarrendon .	Same.	Same.
Peculiar and exempt jurisdiction of the Archbishop of Canterbury in the Deanery of Monks Risborough.	The Parishes of Monks Risborough, and Halton, with Chapelry of Saint Peter's Owlswick, in the County of Buckingham, Newington, with Chapelry of Brightwell Prior, in the County and Diocese of Oxford . .	Same.	Same.
	N.B.—Walton is in the Peculiar of Heydour with Walton in the County of Lincoln. N.B.—Towersey is within the Peculiar of the Dean and Chapter of Lincoln in Thame, in the County of Oxford.		
	*** Winslow, Grandborough, Little Horword, and Aston Abbotts, are in the Archdeaconry of Saint Albans, in the diocese of London . .	In the Abbey Church at Saint Alban's.	John Sam. Story, Registrar.

COURTS EMPOWERED TO GRANT PROBATES OF WILLS
IN THE COUNTY OF HUNTINGDON.

Styles of Courts.	EXTENT OF JURISDICTION.	Places where the Wills are Deposited.	Persons in whose Custody.
Court of the Commissary of the Archdeaconry of Huntingdon. Court of the Archdeacon of Huntingdon.	The County of Huntingdon, except the Peculiars of Buckden, Brampton, Leighton Bromswold, Spaldwick, Stow with Little Catworth, Barham, and Easton.	In the Office of the Deputy Registrar at Huntingdon.	William Margetts, Deputy Registrar.
Court of the Prebendary of Buckden.	The Parish of Buckden.	Same.	Same.
Court of the Prebendary of Brampton.	The Parish of Brampton.	Same.	Same.
Court of the Prebendary of Leighton Bromswold, or Leighton Ecclesia.	The Parish of Leighton Bromswold	Same.	Same.
Court of the Prebendary of Longstow.	The Parishes of Spaldwick, Stow with Catworth, Barham, and Easton.	Same.	Same.

COURTS EMPOWERED TO GRANT PROBATES OF WILLS

IN THAT ART OF THE COUNTY OF HERTFORD WHICH IS IN THE DIOCESE OF LINCOLN.

Styles of Courts.	EXTENT OF JURISDICTION.			Places where the Wills are Deposited.	Persons in whose Custody.
Court of the Commissary of the Archdeaconry of Huntingdon. Court of the Archdeacon of Huntingdon.	Aldbury Aldenham Aswell Aspden Aston Ayott St. Peter Ayott St. Lawrence Baldock Bayford Bengeo Benington Berkhampsted St. Mary Berkhampsted St. Peter Berkhampsted Little Bovingdon Bramfield Bygrave Caldecott Chisfield Clothall Cottered Datchworth Digswell Essenden Flamsted Flandon	Gaddesden Great Gaddesden Little Graveley Harpenden Hatfield Hemel Hempsted Hertford All Saints Hertford St Andrew Hertingfordbury Hinksworth Hitchin Ickleford Ippollitts Kelshall Kensworth Kimpton Knebworth Langley Kings Letchworth Lilley Marston Long Mimms North Munden Great Munden Little Offley Pirton	Puttenham Radwell Rushden Sacombe Sandon Shenley Stapleford Stevenage Tewing Therfield Throcking Totteridge Tring Wallington Walden Kings Walkern Watton Welwyn Westmill Weston Whethamsted Wiggington Willian Wymondley Great Wymondley Little Yardley	In the office of the Deputy Registrar at Hitchin.	William Bentley, Deputy Registrar.

COURTS EMPOWERED TO GRANT PROBATES OF WILLS
IN THE COUNTY OF BEDFORD.

Styles of Courts.	EXTENT OF JURISDICTION.	Places where the Wills are Deposited.	Persons in whose Custody.
Court of the Commissary of the Archdeaconry of Bedford. Court of the Archdeacon of Bedford.	Extends in and throughout the County of Bedford, with exception of Biggleswade and Leighton Buzzard, Eggington, Billington, Stanbridge, and Heath and Reach.	In Saint Paul's Church, in Bedford.	Charles Bailey, Deputy Registrar.
Court of the Prebendary of Leighton Buzzard.	Leighton Buzzard, and Hamlets of Heath and Reach, Eggington, Stanbridge, and Billington	In the Office of the Registrar at Leighton Buzzard.	David Leigh Willis, Registrar.
Court of the Prebendary of Biggleswade.	The Parish of Biggleswade	In the Office of the Registrar at Huntingdon.	William Margetts, Registrar.

COURTS BELONGING TO THE DIOCESE OF LINCOLN EMPOWERED TO GRANT PROBATES OF WILLS IN THE COUNTY OF OXFORD.

Styles of Courts.	EXTENT OF JURISDICTION.	Places where the Wills are Deposited.	Persons in whose Custody.
Court of the Dean and Chapter of Lincoln, in the peculiar of Banbury,	The Parishes of Banbury, Cropredy, and the Hamlets of Great and Little Bourton, part of Cropredy, Horley, Hornton, Neithorp, Mollington, and Wardington, in the County of Oxford, and King's Sutton, in the County of Northampton.	In the office of the Deputy Registrar at Aylesbury.	Edward Pricket, Deputy Registrar.
Court of the Dean and Chapter of Lincoln in the peculiar of Thame.	The Parishes of Thame, Tetsworth, Siddenham, and Great Milton, in the County of Oxford, and Towersey, in the County of Buckingham. . .	Same.	Same.
Court of the Prebendary of Langford Ecclesia in the counties of Oxford & Berks.	The Parish of Langford, and the Hamlets of Grafton and Little Faringdon.	In the Church of St. Aldate, Oxford.	Percival Walsh, Registrar.

COURTS BELONGING TO THE DIOCESE OF LINCOLN EMPOWERED TO GRANT PROBATES OF WILLS

IN THE COUNTY OF NORTHAMPTON.

Styles of Courts.	EXTENT OF JURISDICTION.	Places where the Wills are Deposited.	Persons in whose Custody.
Court of the Prebendary of Gretton.	The Parishes of Gretton and Duddington	In the Registry at Lincoln.	Robert Swan, Registrar.
Court of the Prebendary of Nassington.	The Parishes of Nassington, Yarwell, Apethorpe, and Wood Newton .	In the office of the Registrar at Huntingdon.	William Margetts, Registrar.

IN THE COUNTY OF RUTLAND.

Styles of Courts.	EXTENT OF JURISDICTION.	Places where the Wills are Deposited.	Persons in whose Custody.
Court of the Prebendary of Ketton.	The Parish of Ketton, and Hamlet of Tixover	In the Registry at Lincoln.	Robert Swan, Registrar.
Court of the Prebendary of Liddington.	The Parish of Liddington, and Township of Caldecott . . .	Same.	Same.
Court of the Prebendary of Empingham.	The Parish of Empingham	In the office of the Registrar at Huntingdon.	William Margetts, Registrar.

COURTS BELONGING TO THE DIOCESE OF LINCOLN EMPOWERED TO GRANT PROBATES OF WILLS

IN THE COUNTY OF NORTHAMPTON.

Styles of Courts.	EXTENT OF JURISDICTION.	Places where the Wills are Deposited.	Persons in whose Custody.
Court of the Prebendary of Gretton.	The Parishes of Gretton and Duddington	In the Registry at Lincoln.	Robert Swan, Registrar.
Court of the Prebendary of Nassington.	The Parishes of Nassington, Yarwell, Apethorpe, and Wood Newton.	In the office of the Registrar at Huntingdon.	William Margetts, Registrar.

IN THE COUNTY OF RUTLAND.

Styles of Courts.	EXTENT OF JURISDICTION.	Places where the Wills are Deposited.	Persons in whose Custody.
Court of the Prebendary of Ketton.	The Parish of Ketton, and Hamlet of Tixover	In the Registry at Lincoln.	Robert Swan, Registrar.
Court of the Prebendary of Liddington.	The Parish of Liddington, and Township of Caldecott . . .	Same.	Same.
Court of the Prebendary of Empingham.	The Parish of Empingham	In the office of the Registrar at Huntingdon.	William Margetts, Registrar.